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DEPARTMENT OF HOMELAND SECURITY

6 CFR Chapter I

49 CFR Chapter XII

Ratification of Security Directives

AGENCY: Office of Strategy, Policy, and Plans, Department of Homeland Security (DHS).

ACTION: Notification of ratification of security directives.

SUMMARY: The Department of Homeland Security (DHS) is publishing official notice that the Transportation Security Oversight Board (TSOB) has ratified Transportation Security Administration (TSA) Security Directive 1580–21–01B, Security Directive 1582–21–01B, Security Directive 1580/82–2022–01A, and Security Directive 1580/82–2022–01C applicable to owners and operators of critical rail entities (owners/operators). Security Directive 1580–21–01B and Security Directive 1582–21–01B extended the requirements of 1580–21–01 and 1582–21–01 series for an additional year, with minor revisions. Security Directive 1580/82–2022–01A and Security Directive 1580/82–2022–01C extend the performance-based requirements of the 1580/82–2022–01 series for an additional year and amends them to strengthen their effectiveness and address emerging cyber threats.

DATES: The TSOB ratified Security Directive 1580–21–01B, Security Directive 1582–21–01B, and Security Directive 1580/82–2022–01A on November 22, 2023. The TSOB ratified Security Directive 1580/82–2022–01C on July 29, 2024.

FOR FURTHER INFORMATION CONTACT: Thomas McDermott, Deputy Assistant Secretary for Cyber, Infrastructure, Risk and Resilience Policy, at 202–834–5803 or *thomas.mcdermott@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Cybersecurity Threat

The cyber threat faced by the nation's critical rail infrastructure has only increased in the time since TSA issued its initial security directives addressing cybersecurity in rail and mass transit in December 2021.[1] Cyber threats to surface transportation systems, including railroads and transit systems, continue to proliferate, as both nation-states and criminal cyber groups target critical infrastructure in order to cause operational disruption and economic harm.[2] In recent years, cyber attackers have maliciously targeted surface transportation modes in the United States, including freight railroads, passenger railroads, and rail transit systems, with multiple cyberattack and cyber espionage campaigns.[3] Cyber incidents, particularly ransomware attacks, are likely to increase in the near- and long-term, due in part to vulnerabilities identified by threat actors in U.S. networks.[4] Especially in light of the ongoing Russia-Ukraine conflict,[5] these threats remain elevated and pose a risk to the national and economic security of the United States.

In its 2023 annual assessment, the Intelligence Community noted that ''China almost certainly is capable of launching cyber attacks that could disrupt critical infrastructure services within the United States, including against oil and gas pipelines, and rail systems.'' [6] And the 2024 annual assessment notes that, ''[i]f Beijing believed that a major conflict with the United States were imminent, it would consider aggressive cyber operations against U.S. critical infrastructure and military assets. Such a strike would be designed to deter U.S. military action by impeding U.S. decision-making, inducing societal panic, and interfering with the deployment of U.S. forces.'' [7] In addition, ''Russia maintains its ability to target critical infrastructure . . . in the United States as well as in allied and partner countries'' and ''Tehran's opportunistic approach to cyber-attacks puts U.S. infrastructure at risk for being targeted.'' [8] Furthermore, ''malicious cyber actors have begun testing the capabilities of [artificial intelligence (AI)]-developed malware and AI-assisted software development—technologies that have the potential to enable larger scale, faster, efficient, and more evasive cyber-attacks—against targets, including pipelines, railways, and other US critical infrastructure.'' [9]

B. Regulatory History

To counter the threat to rail infrastructure, in December 2021, TSA issued two security directives to owners and operators of certain higher risk rail entities (owner/operators) requiring them to implement cybersecurity measures necessary to prevent disruption and degradation to their critical infrastructure. Security Directive 1580–21–01 (applicable to freight rail

[1] Transportation Security Administration, SD 1580–21–01 Enhancing Rail Cybersecurity (Dec. 31, 2021), *https://www.tsa.gov/sites/default/files/sd-1580-21-01_signed.pdf;* Transportation Security Administration, SD 1582–21–01 Enhancing public Transportation and Passenger Railroad Cybersecurity (Dec. 31, 2021), *https://www.tsa.gov/sites/default/files/sd-1582-21-01_signed.pdf.*

[2] Annual Threat Assessment of the U.S. Intelligence Community, Office of the Director of National Intelligence (2024 Intelligence Community Assessment), 11, 16 (dated Feb. 5, 2024) (last accessed July 23, 2024, at *https://www.dni.gov/files/ODNI/documents/assessments/ATA-2024-Unclassified-Report.pdf*).

[3] These activities include the January 2023 breach of the Washington Metropolitan Area Transit Authority; the January 2023 breach of San Francisco's Bay Area Rapid Transit System; and the April 2021 breach of New York City's Metropolitan Transportation Authority (the nation's largest mass transit agency) by hackers linked to the government of the People's Republic of China. This threat is ongoing: on February 7, 2024, CISA published an advisory warning of the threat posed by PRC state-sponsored actors. *See* Cybersecurity Advisory (AA24–038A), *PRC State-Sponsored Actors Compromise and Maintain Persistent Access to U.S. Critical Infrastructure.*

[4] Alert (AA22–040A), *2021 Trends Show Increased Globalized Threat of Ransomware,* released by CISA on February 10, 2022 (as revised).

[5] Joint Cybersecurity Alert—Alert (AA22–110A), *Russian State-Sponsored and Criminal Cyber Threats to Critical Infrastructure,* released cybersecurity authorities of the United States, Australia, Canada, New Zealand, and the United Kingdom on April 20, 2022 (as revised).

[6] Annual Threat Assessment of the U.S. Intelligence Community, Office of the Director of National Intelligence (2023 Intelligence Community Assessment), 10 (dated February 6, 2023) (last accessed July 23 2024), *available at https://www.dni.gov/files/ODNI/documents/assessments/ATA-2023-Unclassified-Report.pdf.*

[7] 2024 Intelligence Community Assessment at 11.

[8] 2024 Intelligence Community Assessment at 16, 20.

[9] DHS Intelligence and Analysis (I&A), Homeland Threat Assessment (2024) at 18 (last accessed July 23, 2024, *available at https://www.dhs.gov/sites/default/files/2023-09/23_0913_ia_23-333-ia_u_homeland-threat-assessment-2024_508C_V6_13Sep23.pdf*).

entities) and Security Directive 1582–21–01 (applicable to passenger rail and mass transit entities) required covered owner operators to: (1) report cybersecurity incidents to the Cybersecurity and Infrastructure Security Agency (CISA); (2) designate a cybersecurity coordinator to be available 24/7 to coordinate with TSA and CISA; (3) conduct a vulnerability assessment of cybersecurity practices, identify any gaps, and develop a plan and timeline for remediation; and (4) develop a Cybersecurity Incident Response Plan to reduce the risk of operational disruption in the event of a cybersecurity incident.

Due to the evolving threat to freight and passenger rail, TSA issued Security Directive 1580/82–2022–01 on October 18, 2022, which built on the requirements of the initial directives and required covered owner/operators to implement additional performance-based cybersecurity measures.[10] Under the performance-based framework of Security Directive 1580/82–2022–01, TSA identified critical security outcomes that covered parties must achieve. To ensure that these outcomes are met, the directive required owner/operators to:

- Establish and implement a TSA-approved Cybersecurity Implementation Plan (CIP) that describes the specific cybersecurity measures employed and the schedule for achieving the security outcomes identified; and
- Establish a Cybersecurity Assessment Program (CAP) and submit an annual plan that describes how the owner/operator will proactively and regularly assess the effectiveness of cybersecurity measures and identify and resolve device, network, and/or system vulnerabilities.

The performance-based approach enhances security by mandating that critical security outcomes are achieved while allowing owner/operators to choose the most appropriate security measures for their specific systems and operations.

In response to the continuing cyber threat to rail infrastructure, the requirements of Security Directive 1580–21–01, Security Directive 1582–21–01, and Security Directive 1580/82–2022–01 have been renewed and extended beyond their original expiration dates by subsequent directives, creating three security directive series (the 1580–21–01 series, the 1582–21–01 series, and 1580/82–2022–01 series). As TSA has renewed these directives series, it has also amended their requirements to strengthen their effectiveness and address emerging cyber threats.

The table below provides a list of each of the security directives within the 1580–21–01, 1582–21–01, and 1580/82–2022–01 series. All of the security directives provided in the table are available online in TSA's Surface Transportation Cybersecurity Toolkit.[11]

TABLE 1—TSA SECURITY DIRECTIVES APPLICABLE TO FREIGHT RAIL, PASSENGER RAIL, AND RAIL TRANSIT SYSTEMS

Security directive	Date issued	Effective date	Date ratified by TSOB	Set expiration date	**Federal Register** notice of ratification
1580–21–01	Dec. 2, 2021	Dec. 31, 2021	Dec. 29, 2021	Dec. 31, 2022	87 FR 31093.
1580–21–01A	Oct. 18, 2022	Oct. 24, 2022	Nov. 16, 2022	Oct. 24, 2023	88 FR 36921.
1580–21–01B	Oct. 23, 2023	Oct. 24, 2023	Nov. 22, 2023	Oct. 24, 2024	*Current.
1582–21–01	Dec. 2, 2021	Dec. 31, 2021	Dec. 29, 2021	Dec. 31, 2022	87 FR 31093.
1582–21–01A	Oct. 18, 2022	Oct. 24, 2022	Nov. 16, 2022	Oct. 24, 2023	88 FR 36921.
1582–21–01B	Oct. 23, 2023	Oct. 24, 2023	Nov. 22, 2023	Oct. 24, 2024	*Current.
1580/82–2022–01	Oct. 18, 2022	Oct. 24, 2022	Nov. 16, 2022	Oct. 24, 2023	88 FR 36921.
1580/82–2022–01A	Oct. 23, 2023	Oct. 24, 2023	Nov. 22, 2023	Oct. 24, 2024	*Current.
1580/82–2022–01C	Jul. 1, 2024	Jul. 1, 2024	July 29, 2024	May 2, 2025	*Current.

C. Security Directive 1580–21–01B and Security Directive 1582–21–01B

In light of the continuing threat, TSA determined that the cybersecurity measures required by the 1580–21–01 and 1582–21–01 security directive series remain necessary to protect the nation's critical rail infrastructure beyond the October 24, 2023, expiration date of Security Directive 1580–21–01A and Security Directive 1582–21–01A. On October 23, 2023, TSA issued Security Directive 1580–21–01B and Security Directive 1582–21–01B, extending the requirements of the 1580–21–01 (applicable to freight rail) and 1582–21–01 (applicable to passenger rail and rail transit systems) security directive series for an additional year. Security Directive 1580–21–01B and Security Directive 1582–21–01B contained minor revisions to provide further clarity regarding the applicability of the directives and their compliance deadlines. Additionally, the directives included revisions to improve the effectiveness of the required Cyber Incident Response Plans (CIRPs) by specifying certain requirements for testing exercises. The directives became effective on October 24, 2023, and expired on October 24, 2024.[12]

D. Security Directive 1580/82–2022–01A

Considering the continuing threat, TSA also determined that the measures required by the 1580/82–2022–01 series remained necessary to protect the Nation's critical rail infrastructure beyond Security Directive 1580/82–2022–01's expiration date of October 24, 2023. On October 23, 2023, TSA issued Security Directive 1580/82–2022–01A, extending the requirements of the 1580/82–2022–01 series for an additional year. The directive became effective on October 24, 2023, and was set to expire on October 24, 2024.

In addition to extending the performance-based requirements of the initial directive in this series, Security Directive 1580/82–2022–01A included revisions to strengthen the effectiveness of these requirements and allow greater ability to respond to changing threats. Specifically, the revisions improved the effectiveness of the requirements related to Cybersecurity Assessment Plans (referred to as Cybersecurity Assessment Programs in prior versions); ensured the provisions related to defining Critical Cyber Systems allow flexibility to respond to emerging and evolving threats; and provided greater clarity regarding the role of ''Managed Security Service Providers'' and ''Authorized Representatives.''

[10] 88 FR 36921 (June 6, 2023).

[11] TSA Surface Transportation Cybersecurity Toolkit, *available at https://www.tsa.gov/for-industry/surface-transportation-cybersecurity-toolkit.*

[12] On October 23, 2024, TSA issued Security Directive 1580–21–01C and Security Directive 1582–21–01C. These Security Directives superseded the respective –01B directives. Security Directive 1580–21–01C and Security Directive 1582–21–01C each went into effect on October 24, 2024.

E. Security Directive 1580/82–2022–01C

To address ongoing cyber threats to rail transportation infrastructure, TSA determined that further amendments to the 1580/82–2022–01 series were necessary prior to the expiration of Security Directive 1580/82–2022–01A. On July 1, 2024, TSA issued Security Directive 1580/82–2022–01C, revising and extending the requirements of Security Directive 1580/82–2022–01A.[13] The directive became effective on July 1, 2024, 2024, and is set to expire on May 2, 2025.

Security Directive 1580/82–2022–01C specifically requires Positive Train Control (PTC) systems be included in owner/operators' list of Critical Cyber Systems, subjecting them to the applicable performance-based cybersecurity measures. The designation of PTC systems as a Critical Cyber System ensures that PTC systems are protected by the performance-based cybersecurity measures of the Security Directive 1580/82–2022–01 series.

II. TSOB Ratification

TSA issued Security Directive 1580–21–01B, Security Directive 1582–21–01B, Security Directive 1580/82–2022–01A, and Security Directive 1580/82–2022–01C under 49 U.S.C. 114(*l*)(2)(A), which authorizes TSA to issue emergency regulations or security directives without providing notice or the opportunity for public comment when ''the Administrator determines that a regulation or security directive must be issued immediately in order to protect transportation security . . . .'' Security directives issued pursuant to the procedures in 49 U.S.C. 114(*l*)(2) ''shall remain effective for a period not to exceed 90 days unless ratified or disapproved by the [Transportation Security Oversight Board] or rescinded by the Administrator.'' [14]

The Transportation Security Oversight Board (TSOB) is a body consisting of the Secretary of Homeland Security, the Secretary of Transportation, the Attorney General, the Secretary of Defense, the Secretary of the Treasury, the Director of National Intelligence, or their designees, and a representative of the National Security Council.[15] Among its statutory duties, the TSOB must ''review and ratify or disapprove'' security directives issued under 49 U.S.C. 114(*l*)(2) within 30 days of the action's issuance.[16]

Following the issuance of Security Directive 1580–21–01B, Security Directive 1582–21–01B, Security Directive 1580/82–2022–01A, and Security Directive 1580/82–2022–01C, the chair of the TSOB convened the board to review the directives.[17] In reviewing each directive, the TSOB reviewed the required measures extended and amended by the directives and the continuing need for TSA to maintain these requirements pursuant to its emergency authority under 49 U.S.C. 114(*l*)(2) to prevent the disruption and degradation of the country's critical transportation infrastructure. The TSOB also considered whether to authorize TSA to extend each security directive beyond their expiration dates subject to certain conditions, should the TSA Administrator believe such an extension is necessary to address the evolving threat that may continue beyond the original expiration date.

Following its review, the TSOB ratified Security Directive 1580–21–01B, Security Directive 1582–21–01B, and Security Directive 1580/82–2022–01A on November 22, 2023; and ratified Security Directive 1580/82–2022–01C on July 29, 2024. The TSOB also authorized TSA to extend each of the security directives beyond their current expiration dates, should the TSA Administrator determine such an extension is necessary to address the evolving threat that may continue beyond the original expiration date. Such an extension is subject to the following conditions: (1) there are no changes to the security directive other than an extended expiration date; (2) the TSA Administrator makes an affirmative determination that conditions warrant the extension of the directive's requirements; and (3) the TSA Administrator documents such a determination and notifies the TSOB.

Kristie Canegallo,

Senior Official Performing the Duties of the Deputy Secretary of Homeland Security & Chairman of the Transportation Security Oversight Board.

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BILLING CODE 9110–9M–P

[13] TSA first issued these revisions as Security Directive 1580/82–2022–01B on May 1, 2024. Due to two oversights in the original directive that may have created confusion, TSA issued a corrected version of the amended directive (Security Directive 1580/82–2022–01C) on July 1, 2024. TSA sought TSOB review and ratification of the reissued directive, currently in effect.

[14] 49 U.S.C. 114(*l*)(2)(B).

[15] 49 U.S.C. 115(a), (b).

[16] 49 U.S.C. 115(c)(1); 49 U.S.C. 114(*l*)(2)(B).

[17] The Secretary of Homeland Security serves as the TSOB Chairperson, 49 U.S.C. 115(b)(2), and has further delegated that responsibility to the Deputy Secretary of Homeland Secretary. DHS Delegation No. 7071.1.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1222

[Doc. No. AMS–SC–23–0080]

Paper and Paper-Based Packaging Promotion, Research and Information Order; Clarifying Changes

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule implements clarifying amendments to the Paper and Paper-Based Packaging Promotion, Research and Information Order (Order). The amendments include an added definition for partnership; clarification of the nominations process; clarification about in person and electronic voting for any Board meetings; an update of the timing of financial reporting; and a revision of requirements for when exemptions can be requested. This final rule brings language in the Order up to date with current industry practices.

DATES: This final rule is effective February 20, 2025.

FOR FURTHER INFORMATION CONTACT: Samantha Mareno, Agricultural Marketing Specialist, Market Development Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 1406–S, STOP 0244, Washington, DC 20250–0244; Telephone: (720) 827–4907; or Email: *Samantha.Mareno@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule affecting the Order (7 CFR part 1222) is authorized by the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7411–7425).

Executive Orders 12866, 13563 and 14094

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and

updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This rule is not a significant regulatory action within the meaning of Executive Order 12866. Accordingly, this action has not been reviewed by the Office of Management and Budget under section 6 of the Executive Order.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions will have Tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, or the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act (7 U.S.C. 7418), a person subject to an order may file a written petition with the U.S. Department of Agriculture (USDA), stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

Under the Order, which became effective on January 23, 2014, the Paper and Packaging Board (Board), with oversight by USDA, administers a nationally coordinated program of research, promotion and information designed to strengthen the paper and paper-based packaging industry. The program covers four types of paper and paper-based packaging—printing and writing paper (used to make products for printing, writing, and other communication purposes), kraft packaging paper (used for products like grocery bags and sacks), containerboard (used to make corrugated boxes, shipping containers, and related products), and paperboard (used for food and beverage packaging, tubes, and other miscellaneous products). The program is financed by assessments on domestic manufacturers and importers of paper and paper-based packaging.

This final rule makes multiple clarifying amendments to the Order. These amendments include an added definition for partnership; clarification on the nomination process; clarification of language about in person and electronic voting for any Board meetings; an update of the timing of financial reporting; and revised requirements concerning when exemptions may be requested. The Board, which is composed of domestic manufacturers from across the country and importers, unanimously recommended the changes to the Order on August 19, 2023. This action modifies language in the Order to bring it up to date with current industry practices.

Board Recommendation to Revise Order

The final rule revises several sections in subpart A of the Order. This rule changes the language in § 1222.7 from fiscal period to fiscal year as the term is better understood by the industry. Sections 1222.12 and 1222.13 include the term produce and producer respectively in the definition of manufacture and manufacturer. The term produce and producer are not used in the paper and paper-based packaging industry. Therefore, the final rule removes these terms from the definition of manufacture and manufacturer.

Lastly, this rule adds a new term for partnership in § 1222.19 and states that a partnership includes, but is not limited to, spouses and joint ventures. This revision clarifies who is responsible for paying assessments. With this change, the existing §§ 1222.19 through 1222.29 are renumbered.

Section 1222.41 outlines the Board nominations and appointments process. This rule amends § 1222.41(c)(1) by specifically issuing a call for nominations to all current manufacturers and importers who have paid assessments during the prior fiscal year. Furthermore, revisions to § 1222.41(c)(4) and (5) remove repetitive language. Lastly, § 1222.41(c)(10) is revised by the rule to specify that no two members shall be employed by a single manufacturer or importer that pays assessments under the Order to avoid confusion as to who can serve on the Board.

Section 1222.43(a) allows the Secretary to remove a Board member or employee for failure or refusal to perform their duties, per the Board's recommendation. This final rule removes the employee clause to be consistent with language in other research and promotion orders.

Section 1222.44 outlines the Board's procedures for conducting Board meetings. Section 1222.44(c) states that votes shall be cast in person at an assembled meeting. Additionally, § 1222.44(d) allows for other means of voting in lieu of voting at an assembled meeting. This final rule includes revisions to both sections to include options for electronic voting, or other means.

Section 1222.47 outlines prohibited activities for the Board. Section 1222.47(c) states no program, plan or project including advertising shall be false, misleading, or disparaging to another agriculture commodity. To be consistent in writing style, the rule modifies the language to state any program, plan or project including advertising that is false, misleading, or disparaging to another agriculture commodity. This section is updated to ensure clarity in wording.

Section 1222.50(i) outlines the operating monetary reserve for the Board and states that the funds in the reserve may not exceed one fiscal year's budget of expenses. This rule increases the funds in the reserve so they may not exceed two fiscal years, which is consistent with other research and promotion orders.

Section 1222.51(b) describes when financial statements are to be submitted to the Department. The current timeframe is 30 days after the time period to which it applies, which is too restrictive because the Board reports financial statements on a quarterly basis. Therefore, this final rule specifies that the financial statements are to be

submitted quarterly and no later than 70 days after the period to which it applies.

Section 1222.51(c) refers to the annual financial statement that is submitted to the Department. The annual financial statement is due to the Department within 90 days after the end of the fiscal year. The Board has had difficulty in meeting this short deadline. Therefore, this rule extends the timeframe to no later than 120 days to allow the Board more time to submit the statement to the Department.

Section 1222.52(e) states that importers of paper and paper-based packaging shall pay assessments through Customs to the Board. Customs does not currently collect import assessments for the Board and therefore, this final rule removes ''through Customs'' in paragraph (e), instead stating that each importer shall pay their assessment to the Board.

Section 1222.52(f) states Customs collects assessments. Since Customs does not collect the assessment, the final rule revises the section to state that each importer is responsible for paying assessments directly to the Board.

Section 1222.53(a)(1) specifies the minimum quantity necessary to be eligible for an exemption from assessments and requires manufacturers to apply for an exemption prior to the start of the marketing year. This final rule removes this requirement, allowing them to apply for an exemption at any time during a marketing year, not just before the year starts.

Section 1222.53(a)(2)(iii) provides that importers' assessments are collected by Customs and the Board shall refund the importer who has filed for exemption. Because Customs doesn't collect assessments, the final rule updates this section to reflect that the importer would pay the Board directly.

Section 1222.53(a)(5) details how the quantity of paper and paper-based packaging counts towards an exemption. This final rule revises the paragraph to ensure that in determining whether a manufacturer or import qualifies for the exemption, the combined quantity of all paper and paper-based packaging manufactured or imported during a marketing year shall count towards the 100,000 short ton exemption.

Section 1222.81(b)(2) refers to the frequency of referenda and outlines the criteria for continuation. This final rule updates this section to clarify that only eligible domestic manufacturers or eligible importers are included in the referendum voting. This change does not change who can vote and does not change voting restrictions.

Section 1222.82(b) states that the Secretary has the right to suspend or terminate the program whenever it is favored by the industry. The final rule updates this section to make the language used more concise to avoid confusion by the industry.

This rule updates definitions in § 1222.101 to be consistent with terms defined in subpart A. Specifically, paragraph (e) includes *producer* in the definition for *eligible domestic manufacturer.* This final rule revises this section to remove the word *producer.* Paragraph (i) includes the term *produce* in the definition of *manufacture* and this final rule removes the term *produce* from the definition.

Lastly, § 1222.102(a) outlines the voting eligibility of domestic manufacturers and importers. This final rule revises this section to include clarifying language to avoid confusion in the eligibility.

Final Regulatory Flexibility Act Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale of businesses subject to such action so that small businesses will not be disproportionately burdened. Manufacturers and importers would be considered agricultural service firms. The Small Business Administration defines small agricultural service firms as those having annual receipts of no more than $30 million (13 CFR part 121).

According to the Board, there are approximately 47 manufacturers in the United States that manufacture the types of paper and paper-based packaging covered under the Order. Using an average price of $1,350 per short ton,[1] a manufacturer who manufactures less than 22,220 short tons of paper and paper-based packaging per year would be considered a small entity. The Board estimated that no entity manufactured less than 22,220 short tons in 2022; thus, no domestic manufacturers would be considered small businesses.

Based on Customs data, there were 3,272 importers of paper and paper-based packaging in 2022. Of these, 40 importers, or 1 percent, had annual receipts of more than $30 million of paper and paper-based packaging. Thus, the majority of importers would be considered small entities.

This final rule makes multiple clarifying changes to the Order. The changes include a revision to the definition of importer; inclusion of a definition for partnership; clarification of the nominations process; clarifying language about in person and electronic voting for any Board meetings; an update to the timing of financial reporting; and a revision to the requirements concerning when exemptions will be requested.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0093. This final rule does not change the information collection and recordkeeping requirements previously approved and would impose no additional reporting and recordkeeping burden on domestic manufacturers and importers of paper and paper-based packaging.

As with all Federal research and promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

Regarding alternatives, the Board considered not making the clarifying changes to the Order and leaving it as it is currently. The Board decided against leaving the Order unchanged as confusion would continue and potentially worsen over time. Therefore, that alternative was rejected.

Regarding outreach efforts, the Board determined that making these changes clarifies the issues and answer questions that have arisen over the last eight years and will help resolve similar questions in the future. These changes were discussed by the Board in June and November 2022, and the full Board unanimously recommended the changes on August 19, 2023. AMS has performed this RFA analysis regarding the impact of this action on small entities and invited comments concerning potential effects of this action.

[1] No domestic market pricing information for paper and paper-based packaging was publicly available; instead, average prices were estimated using export data from the U.S. Census Bureau.

A proposed rule concerning this action was published in the **Federal Register** on July 15, 2024 (89 FR 57368). A copy of the proposed rule was also made available through the internet by AMS via *https://www.regulations.gov.* A 30-day comment period ending on August 14, 2024, was provided for interested parties to respond to the proposal.

Comment Analysis

During the proposed rule's 30-day comment period, AMS received two comments, which may be viewed on *https://www.regulations.gov/document/AMS-SC-23-0080-0001/comment.* One comment received was in support of the changes, and one comment was opposed.

The commenter in support of the changes stated they are in favor of the changes as they will be helpful for industry stakeholders.

The other commenter opposed the revised definition of importer, stating the change broadens the scope of the definition, potentially causing confusion. The commenter suggested not revising the definition. AMS considered the comment and agreed. Therefore, the change was not made to this rule.

With all relevant material presented, including the information and recommendations submitted by the Board, the comments received, and other available information, it is hereby found that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the Order.

List of Subjects in 7 CFR Part 1222

Administrative practice and procedure, Advertising, Labeling, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 1222 as follows:

PART 1222—PAPER AND PAPER-BASED PROMOTION, RESEARCH AND INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1222 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. Revise § 1222.7 to read as follows:

§ 1222.7 Fiscal year and marketing year.

Fiscal year and marketing year means the 12-month period ending on December 31 or such other period as recommended by the Board and approved by the Secretary.

■ 3. Revise § 1222.12 to read as follows:

§ 1222.12 Manufacture.

Manufacture means the process of transforming pulp into paper and paper-based packaging.

■ 4. Revise § 1222.13 to read as follows:

§ 1222.13 Manufacturer.

Manufacturer means any person who manufactures paper and paper-based packaging in the United States.

§§ 1222.19 through 1222.29 [Redesignated as §§ 1222.20 through 1222.30]

■ 5. Redesignate §§ 1222.19 through 1222.29 as §§ 1222.20 through 1222.30, respectively.

■ 6. Add new § 1222.19 to read as follows:

§ 1222.19 Partnership.

Partnership includes, but is not limited to:

(a) Spouses who have title to, or leasehold interest in, a paper and paper-based packaging manufacturing entity as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(b) So called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land, facilities, capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, that results in the manufacturing or importation of paper and paper-based packaging and the authority to transfer title to the paper and paper-based packaging so manufactured or imported.

■ 7. In § 1222.41, revise paragraphs (c)(1), (4), (5), and (10) to read as follows:

§ 1222.41 Nominations and appointments.

* * * * *

(c) * * *

(1) The Board shall issue a call for nominations and conduct outreach to all current manufacturers and importers who paid assessments during the prior fiscal year. Manufacturers and importers may submit nominations to the Board;

* * * * *

(4) For domestic seats allocated by region, domestic manufacturers must manufacture paper and paper-based packaging in the region for which they seek nomination. Nominees that manufacture in both regions may seek nomination in one region of their choice;

(5) Nominees that are both a manufacturer and an importer may seek nomination to the board either as a manufacturer or as an importer so long as they meet the qualifications;

* * * * *

(10) No two members shall be employed by a single manufacturer or importer that pays assessments under this part; and,

* * * * *

■ 8. In § 1222.43, revise paragraph (a) to read as follows:

§ 1222.43 Removal and vacancies.

(a) The Board may recommend to the Secretary that a member be removed from office if the member consistently fails or refuses to perform his or her duties properly or engages in dishonest acts or willful misconduct. If the Secretary determines that any person appointed under this subpart consistently fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. A person appointed under this subpart may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

* * * * *

■ 9. In § 1222.44, revise paragraphs (c) and (d) to read as follows:

§ 1222.44 Procedure.

* * * * *

(c) The Board and related committees may conduct meetings by any means of communication available, electronic or otherwise, that effectively assembles the required participants and facilitates open communication. Eligible participants may vote by any means of communication available, electronic or otherwise; provided that votes cast are verifiable and that a quorum and other procedural requirements are met.

(d) In lieu of voting at an assembled meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by a majority of members (unless a two-thirds majority is required under the Order) by any means of communication available, electronic or otherwise. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at an assembled meeting. All votes shall be recorded in Board minutes.

* * * * *

■ 10. In § 1222.47, revise paragraph (c) to read as follows:

§ 1222.47 Prohibited activities.

* * * * *

(c) Any program, plan, or project including advertising that is false, misleading, or disparaging to another

agricultural commodity. Paper and paper-based packaging of all geographic origins shall be treated equally.

■ 11. In § 1222.50, revise paragraph (i) to read as follows:

§ 1222.50 Budget and expenses.

* * * * *

(i) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal years excess funds in any reserve so established: Provided, that the funds in the reserve do not exceed two fiscal year's budget of expenses. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this subpart.

* * * * *

■ 12. In § 1222.51, revise paragraphs (b) and (c) to read as follows:

§ 1222.51 Financial statements.

* * * * *

(b) Each quarterly financial statement shall be submitted to the Department no later than 70 calendar days after the period to which it applies.

(c) The Board shall submit to the Department an audited annual financial statement no later than 120 calendar days after the end of the fiscal year to which it applies.

■ 13. In § 1222.52, revise paragraphs (e) introductory text and (f) to read as follows:

§ 1222.52 Assessments.

* * * * *

(e) Each importer of paper and paper-based packaging shall pay to the Board an assessment on the paper and paper-based packaging imported into the United States identified in the Harmonized Tariff Schedule of the United States (HTSUS) number listed in the following table. In the event that any HTSUS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the description of the paper and paper-based packaging involved, assessments will continue to be collected based on the new number.

* * * * *

(f) Each importer is responsible for paying the assessment directly to the Board within 30 calendar days after the end of the quarter in which the paper and paper-based packaging was imported.

* * * * *

■ 14. § 1222.53, revise paragraphs (a)(1), (a)(2)(iii), and (a)(5) to read as follows:

§ 1222.53 Exemption from assessment.

(a) * * *

(1) Manufacturers that manufacture less than 100,000 short tons of paper and paper-based packaging in a marketing year are exempt from paying assessments. Such manufacturers must apply to the Board, on a form provided by the Board, for a certificate of exemption. This is an annual exemption, and manufacturers must reapply each year. Such manufacturers shall certify that they will manufacture less than 100,000 short tons of paper and paper-based packaging during the marketing year for which the exemption is claimed. Upon receipt of an application for exemption, the Board shall determine whether an exemption may be granted. The Board may request past manufacturing data to support the exemption request. The Board will issue, if deemed appropriate, a certificate of exemption to the eligible manufacturer. It is the responsibility of the manufacturer to retain a copy of the certificate of exemption.

(2) * * *

(iii) The Board shall refund to such importers considered exempt assessments that the importer paid to the Board no later than 60 calendar days after the Board receives such assessments. The Board will stop refund of assessments to such importers who during the marketing year import more than 100,000 short tons of paper and paper-based packaging. These importers will be notified accordingly. No interest shall be paid on the assessments collected by the Board.

* * * * *

(5) In calculating whether a manufacturer or importer qualifies for an exemption, the combined quantity of all paper and paper-based packaging manufactured or imported by the manufacturer or importer during a marketing year shall count towards the 100,000 short-ton exemption.

* * * * *

■ 15. In § 1222.81, revise paragraph (b)(2) to read as follows:

§ 1222.81 Referenda.

* * * * *

(b) * * *

(2) Not later than seven years after the Order becomes effective and every seven years thereafter, to determine whether manufacturers and importers favor the continuation of the Order. The Order shall continue if it is favored by a majority of manufacturers and importers voting in the referendum who, during a representative period determined by the Secretary, are each an eligible domestic manufacturer or an eligible importer and who also represent a majority of the volume of paper and paper-based packaging represented in the referendum;

* * * * *

■ 16. In § 1222.82, revise paragraph (b) to read as follows:

§ 1222.82 Suspension or termination.

* * * * *

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal year whenever the Secretary determines that its suspension or termination is favored by a majority of manufacturers and importers voting in the referendum who, during a representative period determined by the Secretary, are each an eligible domestic manufacturer or an eligible importer and who also represent a majority of the volume of paper and paper-based packaging represented in the referendum.

* * * * *

■ 17. In § 1222.101, revise paragraphs (e) and (i) to read as follows:

§ 1222.101 Definitions.

* * * * *

(e) *Eligible domestic manufacturer* means any person who is currently a domestic manufacturer and who manufactured 100,000 short tons or more of paper and paper-based packaging during the representative period.

* * * * *

(i) *Manufacture* means the process of transforming pulp into paper and paper-based packaging.

* * * * *

■ 18. In § 1222.102, revise paragraph (a) to read as follows:

§ 1222.102 Voting.

(a) Each eligible domestic manufacturer and importer of paper and paper-based packaging shall be entitled to cast only one ballot in the referendum. However, each domestic manufacturer in a landlord/tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to manufacture paper and paper-based packaging, in which more than one of the parties is a domestic manufacturer or importer, shall be entitled to cast one ballot in the referendum covering only such domestic manufacturer or importer's share of ownership.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2025–01375 Filed 1–17–25; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Parts 429, 430, and 431

[EERE–2023–BT–CE–0001]

Energy Conservation Program: Energy Conservation Standards and Test Procedures for Certain Consumer Products and Commercial Equipment; Corrections

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

ACTION: Final rule; correcting amendments.

SUMMARY: The U.S. Department of Energy (''DOE'') is publishing a final rule to amend and correct certain energy conservation standards and test procedures of consumer products and commercial and industrial equipment, as described in sections I and II of this document. The changes addressed in this document are technical in nature, and neither the errors nor the corrections in this document affect the substance of any rulemaking or any conclusions reached in support of any final rule.

DATES: *Effective Date:* January 21, 2025. The incorporation by reference of certain material listed in this rule was approved by the Director of the Federal Register as of September 30, 2022, April 24, 2023, June 5, 2023, and June 14, 2023.

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I. Background

A. Automatic Commercial Ice Makers

On November 1, 2022, DOE published a final rule in the **Federal Register** amending the test procedure for automatic commercial ice makers (''ACIMs'') (87 FR 65856; ''November 2022 ACIM Final Rule''). As part of the November 2022 ACIM Final Rule, DOE codified certification requirements for ACIMs at title 10 of the Code of Federal Regulations (''CFR'') 429.45. However, in the publication of the November 2022 ACIM Final Rule, DOE inadvertently updated 10 CFR 429.45(a)(2)(ii) with a typographical error in the formula for the upper 95-percent confidence limit (''UCL'') which used a ''minus'' sign instead of a ''plus'' sign between the terms of the UCL formula (*see* 87 FR 65856, 65899 (Nov. 1, 2022)). This document identifies and corrects this error.

B. Integrated Light-Emitting Diode Lamps

On July 1, 2016, DOE published a final rule in the **Federal Register** amending the test procedure for integrated light-emitting diode (''LED'') lamps (81 FR 43404; ''July 2016 Integrated LED Lamps Final Rule''). In the July 2016 Integrated LED Lamps Final Rule, DOE adopted the requirement that testing of lumen output, input power, lamp efficacy, power factor, correlated color temperature (''CCT''), color rendering index (''CRI''), lifetime, and standby mode power (if applicable) for integrated LED lamps be conducted by test laboratories accredited by National Voluntary Laboratory Accreditation Program (''NVLAP'') or an accrediting organization recognized by the International Laboratory Accreditation Cooperation (''ILAC''), as codified at 10 CFR 429.56(b)(2). Further, in the July 2016 Integrated LED Lamps Final Rule, DOE provided that it would state directly that accreditation by an Accreditation Body that is a signatory member to the ILAC Mutual Recognition Arrangement (''MRA'') is an acceptable means of laboratory accreditation. 81 FR 43404, 43419 (July 1, 2016). However, DOE inadvertently did not update the certification requirements for integrated LED lamps in 10 CFR 429.56(b)(2) to reflect this statement. This document identifies and corrects this error by specifying in 10 CFR 429.56(b)(2) that the certification report must include the testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body.

Additionally, in the July 2016 Integrated LED Lamps Final Rule, DOE inadvertently updated 10 CFR 429.56(b)(2) to specify that lifetime be reported in years. As indicated in the determinations of their represented values in 10 CFR 429.56(a)(1)(ii)(D) and 10 CFR 429.56(a)(2), respectively, lifetime must be reported in hours and life must be reported in years. This document identifies and corrects this error.

C. General Service Lamps

On August 31, 2022, DOE published a final rule in the **Federal Register** amending the test procedure for general service fluorescent lamps (''GSFLs''), incandescent reflector lamps (''IRLs''), and general service incandescent lamps (''GSILs'') (87 FR 53618; ''August 2022 Lamps Final Rule''). In the August 2022 Lamps Final Rule, DOE reorganized 10 CFR 429.27 to apply only to GSFLs (as opposed to GSFLs, GSILs, and IRLs), establishing new sections 10 CFR 429.55 for IRLs and 10 CFR 429.66 for GSILs, so that each lamp type (*i.e.,* GSFL, IRL, GSIL) has its own section within 10 CFR part 429. 87 FR 53618, 53629 (August 31, 2022). However, as part of the August 2022 Lamps Final Rule, DOE inadvertently did not update the certification requirements for general service lamps (''GSLs'') in 10 CFR 429.57 to change references to 10 CFR 429.27 to reflect this reorganization. Specifically, 10 CFR 429.57(a)(2), (a)(5) and (b)(3) refer to certification requirements for GSILs at 10 CFR 429.27 when they should reference 10 CFR 429.66. This document identifies and corrects this error.

Additionally, in the August 2022 Lamps Final Rule DOE clarified the definition of ''rated wattage'' in 10 CFR 430.2, which included replacing the references to appendix R with references to the relevant sections in 10 CFR part 429. 87 FR 53618, 53629 (August 31, 2022). However, in making

this update, with respect to GSILs, DOE inadvertently referenced 10 CFR 429.27 instead of 10 CFR 429.66 (see paragraph (2) of the ''rated wattage'' definition in 10 CFR 430.2). This document identifies and corrects this error.

D. Uninterruptible Power Supplies

On September 8, 2022, DOE published a final rule in the **Federal Register** amending the battery charger portion of the battery charger and uninterruptible power supply (''UPS'') test procedure at 10 CFR part 430, subpart B, appendix Y (''appendix Y'') (87 FR 55090, ''September 2022 Battery Charger Final Rule''). The final rule also created a new test procedure for both products at 10 CFR part 430, subpart B, appendix Y1 (''appendix Y1'') that expanded the scope of the battery charger test method and established separate metrics for active mode, standby mode, and off mode for all battery chargers other than uninterruptible power supplies. Manufacturers must continue to use the amended test procedure in appendix Y until the compliance date of any new final rule establishing amended energy conservation standards based on the newly established test procedure in appendix Y1 (although early compliance is permitted). 87 FR 55090, 55122 (Sept. 8. 2022). After the compliance date of new standards for battery chargers other than UPSs using these new metrics, manufacturers may no longer use appendix Y and instead will be required to determine compliance using the updated test procedure at appendix Y1. *Id.* at 87 FR 55125.

On April 19, 2024, DOE published a final rule in the **Federal Register** (''April 2024 UPS Final Rule'') amending the UPS test procedure in appendix Y and appendix Y1, which incorporated by reference relevant portions of the latest version of the relevant industry testing standard, harmonized the current DOE definitions with the definitions in the latest version of the industry standard, and added a no-load testing condition as an optional test. 89 FR 28581.

DOE has identified a reference error in both DOE's UPS enforcement provisions at 10 CFR 429.134(o), as well as appendix Y of the UPS test procedure. In 10 CFR 429.134(o), and in sections 0.1(d), 0.1(p), 0.1(q), 0.1(r), and 4.3.4 of appendix Y, DOE incorrectly referenced sections 2.28.1 through 2.28.3 of appendix Y for UPS architecture tests. The correct reference should be sections 2.27.1 through 2.27.3 of appendix Y. DOE additionally notes that the UPS enforcement provisions should also have been updated to address how to determine the UPS architecture of a unit tested using appendix Y1. This document identifies and corrects these reference errors.

In the April 2024 UPS Final Rule, DOE also updated the introductory note to appendix Y. 89 FR 28581, 28592 (April 19, 2024). DOE intended to replace the introductory note, to add an introductory table, and to remove the introductory text to appendix Y. However, as written, the final rule did not remove the now-obsolete introductory text. This document identifies and removes this text.

E. Water Heaters

The test procedure established for consumer water heaters and residential-duty commercial water heaters is located in DOE's regulations at 10 CFR part 430, subpart B, appendix E, ''Uniform Test Method for Measuring the Energy Consumption of Water Heaters'' (''appendix E''), and it specifies that tests must be conducted under specific conditions, depending on the type of water heater being tested. On June 21, 2023, the DOE published a final rule in the **Federal Register** adopting an amended test procedure for consumer water heaters and residential-duty commercial water heaters (88 FR 40406; ''June 2023 Water Heater Final Rule'').

In the preamble to the June 2023 Water Heater final rule, DOE discussed that it was amending the ambient air temperature tolerances required for tests conducted on all water heaters other than heat pump water heaters (*i.e.,* for ''non-heat pump water heaters''), which was to be specified at section 2.2.1 of appendix E. 88 FR 40406, 40435–40436 (June 21, 2023). Specifically, in section III.C.4 of the June 2023 Water Heater Final Rule, DOE explained that it had initially proposed in a notice of proposed rulemaking (''NOPR'') published in the **Federal Register** on January 11, 2022 (87 FR 1554; ''January 2022 Water Heater NOPR'') to update the ambient temperature requirement for non-heat pump water heaters to require that the ambient temperature during testing must be an average of 67.5 °F ± 2.5 °F, with a maximum deviation of 67.5 °F ± 5 °F, as opposed to only a maximum deviation of 67.5 °F ± 2.5 °F as specified in the test procedure at that time. In the June 2023 Water Heater Final Rule, DOE concluded that, after considering comments on the January 2022 Water Heater NOPR, it was adopting the changes to ambient air temperature and relative humidity tolerances as proposed. 88 FR 40406, 40435–40436 (June 21, 2023).

However, the relevant regulatory text of section 2.2.1 in appendix E, as amended by the June 2023 Water Heater Final Rule, does not reflect these amended tolerances and improperly maintained the values specified under the previous version of DOE's test procedure for the subject water heaters. This document identifies and corrects this error.

DOE also discovered a typographical error in section 6.3.2 of appendix E. Section 6.3.2 of appendix E addresses the calculations for mass of water removed during each draw of the 24-hour simulated-use test. In that section, it is written that the volume of water must be multiplied by the density of the water during each draw of the 24-hour simulated-use test to arrive at the mass of water removed during each draw of the 24-hour simulated-use test. Throughout appendix E, the symbol ρ (the lowercase symbol for the Greek letter ''rho'') is used to represent density, including the definition for these values in section 6.3.2 of appendix E. However, the first equation in section 6.3.2 of appendix E incorrectly uses the term $P_{del,i}$, using the letter P rather than the symbol ρ. This document identifies and corrects this error.

Additionally, a typographical error occurred which inadvertently changed an equation in section 6.3.6 of appendix E. Section 6.3.6 of appendix E addresses the calculation of adjusted daily water heating energy consumption for water heaters with rated storage volumes greater than or equal to 2 gallons, as well as circulating water heaters. In that section, it is written that the difference between the energy used to heat water in the test and the energy required to heat the same quantity of water over a 67 °F temperature rise (altogether represented by the term Q_{HWD}) must be added to the adjusted daily water heating energy consumption value to arrive at the daily energy consumption value. However, the equation printed directly below shows the terms being subtracted instead of being added together as the text had indicated. The equation in section 6.3.6 of appendix E specifically reads ''$Q_{dm} = Q_{da} - Q_{HWD}$'' instead of properly reading ''$Q_{dm} = Q_{da} + Q_{HWD}$.'' This document identifies and corrects this error as well.

Another printing error caused the inadvertent deletion of the mathematical equation from section 6.4.7 of appendix E that identifies how to calculate the annual fossil fuel energy consumption of a water heater with rated storage volume less than 2 gallons. The annual fossil fuel energy consumption for such a product is equal to the total annual energy consumption

minus the electrical energy consumption (adjusted from kilowatts to Btu per hour). Thus, the equation should read, ''$E_{annual,f} = E_{annual} - (E_{annual,e} \times 3{,}412)$'' as it did in section 6.4.6 of appendix E prior to the June 2023 Water Heater Final Rule which renumbered the section. This document identifies and corrects this error.

This document also identifies and corrects typographical errors pertaining to the amended standards for water heaters found at 10 CFR 430.32(d). On May 6, 2024, DOE published a final rule in the **Federal Register** adopting amended energy conservation standards for consumer water heaters (89 FR 37778; ''May 2024 Water Heater Final Rule''). Throughout the May 2024 Water Heater Final Rule, DOE discussed transitioning standards for consumer water heaters to be based on an effective storage volume metric, as opposed to the previously used rated storage volume metric. Table I.1 in the May 2024 Water Heater Final Rule demonstrated how the amended standards (with compliance required beginning on May 6, 2029) would be based on effective storage volume. *Id.* at 89 FR 37780–37781. However, when adopting these standards into the regulatory text codified at 10 CFR 430.32(d)(2), the table inadvertently maintained a reference to the rated storage volume metric. *Id.* at 89 FR 37944. This document corrects the amended standards table to read ''Effective storage volume and input rating (*if applicable*)'' instead of ''Rated storage volume and input rating (*if applicable*)'' at 10 CFR 430.32(d)(2).

In addition, the current standards, which use the rated storage volume metric, remain applicable until May 6, 2029. The May 2024 Water Heater Final Rule maintained these standards at 10 CFR 430.32(d)(1). However, the adopted regulatory text at 10 CFR 430.32(d)(1) included a typographical error with respect to the compliance dates for the standards therein. Section (d)(1) of 10 CFR 430.32 reads ''The uniform energy factor of water heaters manufactured May 6, 2029 shall not be less than the following'' instead of ''The uniform energy factor of water heaters manufactured *before* May 6, 2029 shall not be less than the following'' (emphasis added on the word ''before''). This document corrects this error as well.

F. Portable Air Conditioners

On May 15, 2023, DOE published a final rule in the **Federal Register** establishing a new test procedure for portable air conditioners (''ACs'') at 10 CFR part 430, subpart B, appendix CC1, ''Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners'' (''appendix CC1'') (88 FR 31102; ''May 2023 Portable AC Final Rule''). This test procedure must be used to determine compliance with any amended portable AC energy conservation standards that use the Annualized Energy Efficiency Ratio (''AEER'') metric. 88 FR 31102, 31106 (May 15, 2023). In the May 2023 Portable AC Final Rule, as part of appendix CC1, DOE adopted an updated seasonally adjusted cooling capacity (''SACC'') calculation that consists of a weighted average of the cooling capacities measured at the 95 °F and 83 °F test conditions, each adjusted for duct heat transfer capacity losses and infiltration air capacity losses. For single-speed portable ACs, the adjusted cooling capacity for the 83 °F test condition is also multiplied by a load factor of 0.6 for single-duct units and 0.5363 for dual-duct units. 88 FR 31102, 31114 (May 15, 2023).

DOE has identified an error in section 5.1 of appendix CC1, which contains the calculations of adjusted cooling capacity for portable ACs at the 95 °F and 83 °F operating conditions. The identified error is in the formula for adjusted cooling capacity of single-duct single-speed units at 83 °F (''ACC_{83}''), which as published includes the term ''$Q_{infiltration_95}$.'' This term was included erroneously, and the formula should have used the term ''$Q_{infiltration_83}$'' to reflect the infiltration heat transfer at 83 °F rather than at 95 °F as is currently shown. This erroneous term is also included in the amplifying instruction for single-speed single-duct units in that section, which should reference the $Q_{infiltration_83}$ value in addition to $Q_{infiltration_95}$. This document identifies and corrects these errors.

G. Refrigerators, Refrigerator-Freezers, and Freezers

On January 17, 2024, DOE published a direct final rule in the **Federal Register** adopting amended energy conservation standards for refrigerators, refrigerator-freezers, and freezers (89 FR 3026; ''January 2024 Refrigerator Direct Final Rule''). In the publication of the January 2024 Refrigerator Direct Final Rule, DOE inadvertently updated 10 CFR 430.32(a)(1) with a typographical error which states the current energy conservation standards for refrigerators, refrigerator-freezers, and freezers ''apply to products manufactured on or before September 15, 2014.'' This document identifies and corrects this error, with text that reads ''standards apply to products manufactured on or after September 15, 2014.''

In the January 2024 Refrigerator Direct Final Rule, DOE also inadvertently updated 10 CFR 430.32(a)(1) with another typographical error which lists the equation for the maximum energy use for product class 4I–BI as ''10.22AV + 441.4.2.'' This document identifies and corrects this error, to reflect the correct equation of ''10.22AV + 441.4.''

H. Commercial Package Air Conditioners and Heat Pumps

On May 20, 2024, DOE published a final rule in the **Federal Register** amending the current test procedures for air-cooled commercial unitary air conditioners with a rated cooling capacity greater than or equal to 65,000 Btu/h, evaporatively-cooled commercial unitary air conditioners, and water-cooled commercial unitary air conditioners (referred to collectively as ''CUACs and CUHPs'') (89 FR 43986; ''May 2024 CUAC and CUHP TP Final Rule'').

As part of the publication of the May 2024 CUAC and CUHP TP Final Rule, DOE updated Table 1 to paragraph (b) of 10 CFR 431.96, which lists the test procedure for all commercial air conditioners and heat pumps, and included a typographical error in one of the column headers. Specifically, the column heading in Table 1 to paragraph (b) erroneously stated, ''Use tests, conditions, an procedures in'' instead of ''Use tests, conditions and procedures in'' (*see* 89 FR 43986, 44037 (May 20, 2024). This document identifies and corrects this error.

I. Distribution Transformers

The applicable energy conservation standard requirements for distribution transformers are contained in DOE's regulations at 10 CFR part 431, subpart K and are applicable to products that meet the definition of ''distribution transformer'' as codified at 10 CFR 431.192. 10 CFR 431.192 also includes definitions for several kinds of equipment explicitly excluded from the definition of ''distribution transformer.''

On April 22, 2024, DOE published a final rule in the **Federal Register** adopting amended energy conservation standards for distribution transformers and adopting minor edits to the definitions relevant for distribution transformers, including clarifying edits to the definition of ''special-impedance transformer'' (89 FR 29834; ''April 2024 Transformer Final Rule''). In the publication of the April 2024 Transformer Final Rule, DOE updated 10 CFR 431.192 with a typographical error in the titles of Tables 1 and 2 relevant for the definition of ''special-impedance transformer.'' Specifically,

the headings for Table 1 and Table 2 each state, ''to the Definition o 'Special-Impedance Transformer.' '' This document identifies and corrects this error with text that reads, ''to the Definition of 'Special-Impedance Transformer.' ''

J. Walk-In Coolers and Walk-In Freezers

On May 4, 2023, DOE published a final rule in the **Federal Register** amending the test procedures for walk-in coolers and walk-in freezers (referred to as ''walk-ins'' or ''WICFs'') (88 FR 28780; ''May 2023 WICF TP Final Rule''). As part of the May 2023 WICF TP Final Rule, DOE adopted a new test procedure at 10 CFR part 431, subpart R, appendix C1 (''appendix C1'') and a new efficiency metric (*i.e.,* annual walk-in energy factor 2 (''AWEF2'')), for walk-in refrigeration systems. Appendix C1 references the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') industry test standard AHRI 1250–2020, ''2020 Standard for Performance Rating of Walk-in Coolers and Freezers.''

AWEF2 is the ratio of annual total heat removed from a walk-in box (*i.e.,* the annual walk-in box load) to the annual total energy input. For all outdoor dedicated condensing refrigeration systems (*i.e.,* outdoor matched pairs, single-package dedicated systems, and dedicated condensing units), annual walk-in box load and annual energy use are determined by summing the walk-in box load and energy use for 20 different bins and corresponding bin temperatures multiplied by the number of hours in each bin (*see, e.g.,* section 7.4.1 of AHRI 1250–2020). Power values for each bin are interpolated or extrapolated based on the power measurements taken at three different outdoor ambient temperatures (95 °F, 59 °F, and 35 °F). For outdoor dedicated condensing refrigeration systems, there are three off-cycle tests conducted at these same three outdoor ambient conditions (95 °F, 59 °F, and 35 °F), and, therefore, there are three separate measurements of off-cycle condensing unit power (*see, e.g.,* Table 5 of AHRI 1250–2020).

In the May 2023 WICF TP Final Rule, for outdoor dedicated condensing refrigeration systems, DOE deviated from the AHRI 1250–2020 calculations for off-cycle energy use in AWEF2 because the equations for refrigeration system total power input by each bin temperature t_j (*e.g.,* equation 13 of AHRI 1250–2020) do not use off-cycle power values that vary by bin temperature. Because the condensing unit off-cycle power may vary as a function of outdoor temperature, DOE adopted instructions for calculating condensing unit off-cycle power as a function of outdoor temperature based on the measurements made at the three outdoor test condition temperatures. 88 FR 28780, 28812–28813 (May 4, 2023). DOE adopted these provisions for all outdoor dedicated condensing systems, regardless of whether they are high-, medium-, or low-temperature dedicated condensing systems.

Section 3.4.12.2 of appendix C1 specifies how to calculate AWEF2 for high-temperature, outdoor matched pairs or single-packaged refrigeration systems. Section 3.4.12.2 erroneously specifies that the condensing unit off-cycle power, $\dot{E}_{cu,off}$, is measured as described in section C3.5 of AHRI 1250–2020 and does not specify that condensing unit off-cycle power should be determined based on bin temperature t_j per section 3.4.3.3 of appendix C1. This document identifies and corrects this error with text that specify that condensing unit off-cycle power for high-temperature, outdoor matched pairs or single-packaged refrigeration systems should be determined based on bin temperature t_j per section 3.4.3.3 of appendix C1.

K. Circulator Pumps

On May 20, 2024, DOE published a final rule in the **Federal Register** establishing energy conservation standards for circulator pumps (89 FR 44464; ''May 2024 Circulator Pump Final Rule''). In the publication of the May 2024 Circulator Pump Final Rule, DOE updated the section heading of 10 CFR 431.465 which previously read ''Pumps energy conservation standards and their compliance dates'' to read ''Circulator pumps energy conservation standards and their compliance dates.'' This amendment was in error, as this section of the CFR includes energy conservation standards for dedicated purpose pool pumps and commercial and industrial pumps in addition to circulator pumps. This document identifies and corrects this error by reverting to the previous section heading.

L. Commercial and Industrial Pumps

The test procedure established for commercial and industrial pumps is located in DOE's regulations at 10 CFR part 431, subpart Y, appendix A, ''Uniform Test Method for the Measurement of Energy Consumption of Pumps'' (''appendix A''). Sections IV.D.2 and VI.D.2 of appendix A outline how to determine the best efficiency point (''BEP'') using the testing-based approach for pumps sold with motors. On March 24, 2023, DOE published a final rule in the **Federal Register** adopting an amended test procedure for commercial and industrial pumps (88 FR 17934; ''March 2023 Pumps Final Rule'').

DOE has identified errors in sections IV.D.2 and VI.D.2 of appendix A, as finalized in the March 2023 Pumps Final Rule, which erroneously reference ''pump efficiency,'' calculated using ''pump power input,'' in describing how to determine the BEP using the testing-based approach for pumps sold with motors; whereas, those sections should instead reference ''overall efficiency,'' calculated using ''driver power input,'' consistent with the wording as it appeared prior to the amendments of the March 2023 Pumps Final Rule. This document identifies and corrects these errors by reverting to the prior language.

II. Need for Correction

A. Automatic Commercial Ice Makers

As published, the regulatory text in 10 CFR 429.45(a)(2)(ii) will likely cause confusion and may mislead interested parties regarding how to properly determine the UCL for ACIM certification purposes. The relevant changes to 10 CFR 429.45(a)(2)(ii) correct the inadvertent formula error. Accordingly, the changes addressed in this document are technical in nature.

B. Integrated Light-Emitting Diode Lamps

As published, the regulatory text in 10 CFR 429.56(b)(2) will likely cause confusion and may mislead interested parties regarding the entities permitted to test integrated LED lamps and the units to be used in making certain representations. The relevant changes to 10 CFR 429.56(b)(2) correct the units used and the testing laboratory requirements. Accordingly, the changes addressed in this document are technical in nature.

C. General Service Lamps

As published, the erroneous section references in the regulatory text in sections (a) and (b) of 10 CFR 429.57 and the definition of ''rated wattage'' in 10 CFR 430.2 will likely cause confusion and may mislead interested parties regarding how to properly test and certify GSFLs, IRLs, and GSILs. The relevant changes to sections (a) and (b) of 10 CFR 429.57 and the definition of ''rated wattage'' in 10 CFR 430.2 correct the reference errors. Accordingly, the changes addressed in this document are technical in nature.

D. Uninterruptible Power Supplies

As published, the now-obsolete introductory text in appendix Y, the

erroneous section references in the regulatory text in 10 CFR 429.134(o), and sections 0 and 4.3.4 of appendix Y will likely cause confusion and may mislead interested parties regarding test procedure applicability date, and regarding how to properly determine UPS architecture. The relevant changes to 10 CFR 429.134(o) and sections 0 and 4.3.4 of appendix Y correct the reference errors related to UPS architecture testing. Accordingly, the changes addressed in this document are technical in nature.

E. Water Heaters

As published, the regulatory text in sections 2.2.1, 6.3.6, and 6.4.7 of appendix E, will likely cause confusion and may mislead interested parties regarding how to properly conduct testing under DOE's consumer water heaters and residential-duty commercial water heaters test procedure. The relevant changes to section 2.2.1 of appendix E, involving a tolerance to ambient temperature requirement for non-heat pump water heaters, was discussed in the June 2023 Water Heater Final Rule's preamble, but it was inadvertently omitted from the amended regulatory text. The relevant changes to section 6.3.2 and section 6.3.6 of appendix E, involving the proper nomenclature for mass of water removed and the proper calculation of daily energy consumption, respectively, fix inadvertent typographical errors. The changes to section 6.4.7 of appendix E correct the inadvertent deletion of an equation used to compute annual fossil fuel energy consumption. Additionally, the relevant changes to the amended standards at 10 CFR 430.32(d)(1)–(2), involving the description of the compliance date and the storage volume metric, also resolve inadvertent typographical errors. Accordingly, the changes addressed in this document are technical in nature.

F. Portable Air Conditioners

As published, the regulatory text in section 5.1 of appendix CC1 to subpart B of 10 CFR part 430 will likely result in confusion as to the meaning of these terms and the references to provisions elsewhere in the test procedure. The relevant changes to section 5.1 of appendix CC1 correct the typographical errors introduced in the May 2023 Portable AC Final Rule. Accordingly, the changes addressed in this document are technical in nature.

G. Refrigerators, Refrigerator-Freezers, and Freezers

As published, the regulatory text in 10 CFR 430.32(a)(1) will likely cause confusion and may mislead interested parties regarding applicability of the current energy conservation standards of refrigerators, refrigerator-freezers, and freezers. The relevant changes to 10 CFR 430.32(a)(1), correct the inadvertent typographical errors introduced in the January 2024 Refrigerator Direct Final Rule. Accordingly, the changes addressed in this document are editorial in nature.

H. Commercial Package Air Conditioners and Heat Pumps

As published, the regulatory text in section 10 CFR 431.96 may cause confusion to interested parties regarding how to properly conduct testing under DOE's commercial air conditioner and heat pump test procedures. The relevant changes to 10 CFR 431.96 correct the typographical error introduced in the May 2024 CUAC and CUHP TP Final Rule. Accordingly, the changes addressed in this document are editorial in nature.

I. Distribution Transformers

As published, the regulatory text in section 10 CFR 431.192 will likely cause confusion to interested parties regarding definitions relevant to the current energy conservation standards of distribution transformers. The relevant changes to 10 CFR 431.192 correct the typographical error introduced in the April 2024 Transformer Final Rule. Accordingly, the changes addressed in this document are editorial in nature.

J. Walk-In Coolers and Walk-In Freezers

As published, the regulatory text in section 3.4.12.2 of 10 CFR part 431, subpart R, appendix C1 will likely cause confusion and may mislead interested parties regarding how to properly conduct testing of high-temperature, outdoor matched pairs or single-packaged dedicated condensing systems under DOE's walk-in refrigeration systems test procedure. The relevant changes to section 3.4.12.2 of appendix C1 correct the inadvertent error introduced in the May 2023 WICF TP Final Rule. Accordingly, the changes addressed in this document are technical in nature.

K. Circulator Pumps

As published, the title of 10 CFR 431.465 will likely cause confusion and may mislead interested parties regarding the current energy conservation standards of dedicated purpose pool pumps and commercial and industrial pumps. The relevant changes to 10 CFR 431.465 correct the misleading section heading introduced in the May 2024 Circulator Pump Final Rule. Accordingly, the changes addressed in this document are editorial in nature.

L. Commercial and Industrial Pumps

As published, the regulatory text in sections IV.D.2 and VI.D.2 of appendix A to subpart Y of 10 CFR part 431 will likely cause confusion and may mislead interested parties regarding how to properly conduct testing under DOE's commercial and industrial pump test procedure. The relevant changes to 10 CFR part 431, subpart Y, appendix A correct the inadvertent error introduced in the March 2023 Pumps Final Rule. Accordingly, the changes addressed in this document are technical in nature.

III. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the final rules discussed elsewhere in this document related to ACIMs [1]; integrated LED lamps [2]; general service lamps [3]; UPSs [4]; water heaters [5]; portable ACs [6]; refrigerators, refrigerator-freezers, freezers [7]; CUACs and CUHPs [8]; distribution transformers [9]; WICFs [10]; circulator pumps [11]; and commercial and industrial pumps [12] remain unchanged for this final rule correcting amendments.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(B), DOE finds that there is good cause to not issue a separate notification to solicit public comment on the changes contained in this document. Issuing a separate notification to solicit public comment would be impracticable, unnecessary, and contrary to the public interest. Neither the errors nor the corrections in this document affect the substance of the aforementioned final rules for the subject consumer products and commercial and industrial equipment or any of the conclusions reached in support of those documents. Additionally, given the energy conservation standards and test procedures that are being corrected are

[1] *See* 87 FR 65856, 65895–65898 (Nov. 1, 2022).

[2] *See* 81 FR 43404, 43420–43425 (July 1, 2016).

[3] *See* 87 FR 53618, 53633–53637 (August 31, 2022).

[4] *See* 87 FR 55090, 55117–55122 (Sept. 8, 2022); 89 FR 28581, 28589–28592 (April 19, 2024).

[5] *See* 88 FR 40406, 40468–40471 (June 21, 2023); 89 FR 37778, 37936–37941 (May 6, 2024).

[6] *See* 88 FR 31102, 31122–31125 (May 15, 2023).

[7] *See* 89 FR 3026, 3109–3112 (Jan. 17, 2024).

[8] *See* 89 FR 4986, 44028–44032 (May 20, 2024).

[9] *See* 89 FR 29834, 30032–30038 (April 22, 2024).

[10] *See* 88 FR 28780; 28827–28834 (May 4, 2023)

[11] *See* 89 FR 44464, 44532–44535 (May 20, 2024).

[12] *See* 88 FR 17934, 17968–17972 (March 24, 2023).

a result of an extensive administrative record with numerous opportunities for public comment, DOE finds additional comment on the technical corrections is unnecessary. Therefore, providing prior notification and an opportunity for public comment on correcting objective, typographical errors that do not change the substance of the relevant energy conservation standards and test procedures serves no useful purpose.

Further, this rule correcting typographical errors makes non-substantive changes to the subject test procedure and energy conservation standards. As such, this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d) otherwise applicable to rules that make substantive changes.

The following standards appear in the amendatory text of this document and were previously approved for the locations in which they appear: ANSI C78.81, ANSI C78.901, AHAM PAC–1–2022, AHRI 1250–2020, and HI 40.6–2021.

IV. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 430

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

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on January 10, 2025, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 13, 2025.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE corrects parts 429, 430, and 431 of Chapter II of Title 10, Code of Federal Regulations, by making the following correcting amendments:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 429.45 by revising paragraph (a)(2)(ii) to read as follows:

§ 429.45 Automatic commercial ice makers.

(a) * * *

(2) * * *

(ii) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the Student's t-Distribution Values for a 95 percent one-tailed confidence interval with n-1 degrees of freedom (from appendix A to this subpart).

* * * * *

■ 3. Amend § 429.56 by revising paragraph (b)(2) to read as follows:

§ 429.56 Integrated light-emitting diode lamps.

* * * * *

(b) * * *

(2) Values reported in certification reports are represented values. Pursuant to § 429.12(b)(13), a certification report must include the following public product-specific information: The testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body, the date of manufacture, initial lumen output in lumens (lm), input power in watts (W), lamp efficacy in lumens per watt (lm/W), CCT in kelvin (K), power factor, lifetime in hours (and whether value is estimated), and life in years (and whether value is estimated). For lamps with multiple modes of operation (such as variable CCT or CRI), the certification report must also list which mode was selected for testing and include detail such that another laboratory could operate the lamp in the same mode. Lifetime and life are estimated values until testing is complete. When reporting estimated values, the certification report must specifically describe the prediction method, which must be generally representative of the methods specified in appendix BB. Manufacturers are required to maintain records per § 429.71 of the development of all estimated values and any associated initial test data.

* * * * *

■ 4. Amend § 429.57 by revising paragraphs (a) and (b) to read as follows:

§ 429.57 General service lamps.

(a) *Determination of represented value.* Manufacturers must determine represented values, which includes certified ratings, for each basic model of general service lamp in accordance with following sampling provisions.

(1) The requirements of § 429.11 are applicable to general service lamps, and

(2) For general service incandescent lamps, use § 429.66(a);

(3) For compact fluorescent lamps, use § 429.35(a);

(4) For integrated LED lamps, use § 429.56(a);

(5) For other incandescent lamps, use § 429.66(a);

(6) For other fluorescent lamps, use § 429.35(a); and

(7) For OLED lamps and non-integrated LED lamps, use § 429.56(a).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to general service lamps;

(2) Values reported in certification reports are represented values;

(3) For general service incandescent lamps, use § 429.66(b);

(4) For compact fluorescent lamps, use § 429.35(b);

(5) For integrated LED lamps, use § 429.56(b); and

(6) For other incandescent lamps, for other fluorescent lamps, for OLED lamps and non-integrated LED lamps, pursuant to § 429.12(b)(13), a certification report must include the following public product-specific

information: The testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body, initial lumen output, input power, lamp efficacy, and power factor. For non-integrated LED lamps, the certification report must also include the input voltage and current used for testing.

* * * * *

■ 5. Amend § 429.134 by revising paragraph (o)(1) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(o) * * *

(1) To determine the uninterruptible power supply (UPS) architecture:

(i) When testing according to appendix Y to subpart B of part 430, perform the UPS architecture tests specified in the definitions of VI, VFD, and VFI in sections 2.27.1 through 2.27.3 of appendix Y to subpart B of 10 CFR part 430.

(ii) When testing according to appendix Y1 to subpart B of part 430, perform the UPS architecture tests specified in the definitions of VI, VFD, and VFI in sections 2.28.1 through 2.28.3 of appendix Y1 to subpart B of 10 CFR part 430.

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 7. Amend § 430.2 by revising the definition of ''Rated wattage'' to read as follows:

§ 430.2 Definitions.

* * * * *

Rated wattage means:

(1) With respect to fluorescent lamps and general service fluorescent lamps:

(i) If the lamp is listed in ANSI C78.81 (incorporated by reference; see § 430.3) or ANSI C78.901 (incorporated by reference; see § 430.3), the rated wattage of a lamp determined by the lamp designation of Clause 11.1 of ANSI C78.81 or ANSI C78.901;

(ii) If the lamp is a residential straight-shaped lamp, and not listed in ANSI C78.81 (incorporated by reference; see § 430.3), the wattage of a lamp when operated on a reference ballast for which the lamp is designed; or

(iii) If the lamp is neither listed in one of the ANSI standards referenced in paragraph (1)(i) of this definition, nor a residential straight-shaped lamp, a represented value of electrical power for a basic model, determined according to 10 CFR 429.27, and derived from the measured initial input power of a lamp tested according to appendix R to subpart B of this part.

(2) With respect to general service incandescent lamps, a represented value of electrical power for a basic model, determined according to 10 CFR 429.66, and derived from the measured initial input power of a lamp tested according to appendix R to subpart B of this part.

(3) With respect to incandescent reflector lamps, a represented value of electrical power for a basic model, determined according to 10 CFR 429.55, and derived from the measured initial input power of a lamp tested according to appendix R to subpart B of this part.

* * * * *

■ 8. Amend appendix E to subpart B of part 430 by revising sections 2.2.1, 6.3.2, 6.3.6, and 6.4.7 to read as follows:

Appendix E to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Water Heaters

* * * * *

2.

* * *

2.2 * * *

2.2.1 *Non-Heat Pump Water Heaters.* The ambient air temperature shall be maintained at an average of 67.5 °F ± 2.5 °F (19.7 °C ± 1.4 °C) on a continuous basis throughout the test, with a maximum deviation of 67.5 °F ± 5 °F (19.7 °C ± 2.8 °C).

* * * * *

6. * * *

6.3 * * *

6.3.2 *Mass of Water Removed.* Determine the mass of water removed during each draw of the 24-hour simulated-use test ($M_{del,i}$) as:

If the mass of water removed is measured, use the measured value, or, if the volume of water removed is being measured,

$$M_{del,i} = V_{del,i} \times \rho_{del,i}$$

* * * * *

6.3.6 *Adjusted Daily Water Heating Energy Consumption.* The adjusted daily water heating energy consumption, $Q_{da,}$ takes into account that the ambient temperature may differ from the nominal value of 67.5 °F (19.7 °C) due to the allowable variation in surrounding ambient temperature of 65 °F (18.3 °C) to 70 °C (21.1 °C). The adjusted daily water heating energy consumption is computed as:

$$Q_{da} = Q_d - (67.5\,°F - \overline{T}_{a,stby,2})\ UA\ \tau_{stby,2}$$

or,

$$Q_{da} = Q_d - (19.7\,°C - \overline{T}_{a,stby,2})\ UA\ \tau_{stby,2}$$

Where:

Q_{da} = the adjusted daily water heating energy consumption, Btu (kJ).

Q_d = as defined in section 6.3.4 of this appendix.

$\overline{T}_{a,stby,2}$ = the average ambient temperature during the total standby portion, $\tau_{stby,2}$, of the 24-hour simulated-use test, °F (°C).

UA = as defined in section 6.3.4 of this appendix.

$T_{stby,2}$ = the number of hours during the 24-hour simulated-use test when water is not being withdrawn from the water heater.

A modification is also needed to take into account that the temperature difference between the outlet water temperature and supply water temperature may not be equivalent to the nominal value of 67 °F (125 °F–58 °F) or 37.3 °C (51.7 °C–14.4 °C). The following equations adjust the experimental data to a nominal 67 °F (37.3 °C) temperature rise.

The energy used to heat water, Btu/day (kJ/day), may be computed as:

$$Q_{HW} = \sum_{i=1}^{N} \frac{M_{del,i}\ C_{pi}\left(\overline{T}_{del,i} - \overline{T}_{in,i}\right)}{\eta_r}$$

Where:

N = total number of draws in the 24-hour simulated-use test.

$M_{del,i}$ = the mass of water removed during the *i*th draw (i = 1 to N) as calculated in section 6.3.2 of this appendix, lb (kg).

C_{pi} = the specific heat of the water withdrawn during the *i*th draw of the 24-hour simulated-use test, evaluated at ($\overline{T}_{del,i}$ + $\overline{T}_{in,i}$)/2, Btu/(lb·°F) (kJ/(kg·°C)).

$\overline{T}_{del,i}$ = the average water outlet temperature measured during the *i*th draw (i = 1 to N), °F (°C).

$\overline{T}_{in,i}$ = the average water inlet temperature measured during the *i*th draw (i = 1 to N), °F (°C).

η_r = as defined in section 6.3.3 of this appendix.

The energy required to heat the same quantity of water over a 67 °F (37.3 °C) temperature rise, Btu/day (kJ/day), is:

$$Q_{HW,67°F} = \sum_{i=1}^{N} \frac{M_{del,i}\ C_{pi}(125°F - 58°F)}{\eta_r}$$

or,

$$Q_{HW,37.3°C} = \sum_{i=1}^{N} \frac{M_{del,i}\ C_{pi}(51.7°C - 14.4°C)}{\eta_r}$$

The difference between these two values is:

$Q_{HWD} = Q_{HW,67°F} - Q_{HW}$

or,

$Q_{HWD} = Q_{HW,37.3°C} - Q_{HW}$

This difference (Q_{HWD}) must be added to the adjusted daily water heating energy consumption value. Thus, the daily energy consumption value, which takes into account that the ambient temperature may not be 67.5 °F (19.7 °C) and that the temperature rise across the storage tank may not be 67 °F (37.3 °C) is:

$Q_{dm} = Q_{da} + Q_{HWD}$

* * * * *

6.4 * * *

6.4.7 *Annual Fossil Fuel Energy Consumption.* The annual fossil fuel energy consumption for water heaters with rated storage volumes less than 2 gallons, $E_{annual,f}$, is computed as:

$E_{annual,f} = E_{annual} - (E_{annual,e} \times 3412)$

Where:

E_{annual} = the annual energy consumption as defined in section 6.4.5 of this appendix, Btu (kJ).

$E_{annual,e}$ = the annual electrical energy consumption as defined in section 6.4.6 of this appendix, kWh.

3412 = conversion factor from kWh to Btu.

* * * * *

■ 9. Amend appendix Y to subpart B of part 430 by revising Note 1 and table and sections 0.1(d), 0.1(p), 0.1(q), 0.1(r), and 4.3.4 to read as follows:

Appendix Y to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery Chargers

Note 1: For all Battery Chargers, including UPSs, compliance with the relevant standard in § 430.32(z) or any representation must be based upon results generated under the corresponding appendix listed in the following table:

	Battery chargers other than UPSs	UPS
On or After July 3, 2024 and Before October 16, 2024 ...	Use appendix Y as it appeared on either March 7, 2023, or July 3, 2024.	Use appendix Y as it appeared on either March 7, 2023, or July 3, 2024.
On or After October 16, 2024 and Before compliance date of any new or amended standards published any time after September 2022.	Use appendix Y as it appeared on July 3, 2024..	Use appendix Y as it appeared on July 3, 2024.
On or After compliance date of any new or amended standards published any time after September 2022.	Use appendix Y1	Use appendix Y1.

0. * * *

0.1 * * *

(d) Section 5.2, UPS input specification, as specified in section 2.27.2 of this appendix;

* * * * *

(p) Section 6.2.2.7, AC input failure, as specified in Note to section 2.27.1 of this appendix;

(q) Section 6.4, Type test procedure (electrical); Section 6.4.1, Input—AC input power compatibility; Section 6.4.1.2, Steady state input voltage tolerance and VI input independency, as specified in Note to section 2.27.3 of this appendix;

(r) Section 6.4.1.3, Combined input voltage/frequency tolerance and VFI input independency, as specified in Note to section 2.27.2 of this appendix;

* * * * *

4. * * *

4.3. * * *

4.3.4 UUT Classification

Optional Test for determination of UPS architecture. Determine the UPS architecture by performing the tests specified in the definitions of VI, VFD, and VFI (sections 2.27.1 through 2.27.3 of this appendix).

* * * * *

■ 10. Amend appendix CC1 to subpart B of part 430 by revising section 5.1 to read as follows:

Appendix CC1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners

* * * * *

5. * * *

5.1 *Adjusted Cooling Capacity.* Calculate the adjusted cooling capacities at the 95 °F and 83 °F operating conditions specified below of the sample unit, in Btu/h, according to the following equations.

For a single-duct single-speed unit:

$ACC_{95} = Capacity_{SD} - Q_{duct_SD} - Q_{infiltration_95}$

$ACC_{83} = 0.6000 \times (Capacity_{SD} - Q_{duct_SD} - Q_{infiltration_83})$

For a single-duct variable-speed unit:

$ACC_{95} = Capacity_{SD_Full} - Q_{duct_SD_Full} - Q_{infiltration_95}$

$ACC_{83} = Capacity_{SD_Low} - Q_{duct_SD_Low} - Q_{infiltration_83_Low}$

For a dual-duct single-speed unit:

$ACC_{95} = Capacity_{DD_95_Full} - Q_{duct_DD_95_Full} - Q_{infiltration_95}$

$ACC_{83} = 0.5363 \times (Capacity_{DD_83} - Q_{duct_DD_83} - Q_{infiltration_83})$

For a dual-duct variable-speed unit:

$ACC_{95} = Capacity_{DD_95_Full} - Q_{duct_DD_95_Full} - Q_{infiltration_95}$

$ACC_{83} = Capacity_{DD_Low} - Q_{duct_DD_83_Low} - Q_{infiltration_83_Low}$

Where:

ACC_{95} and ACC_{83} = adjusted cooling capacity of the sample unit, in Btu/h, calculated from testing at:

For a single-duct single-speed unit, test configuration 2A in Table 2 of AHAM PAC–1–2022.

For a single-duct variable-speed unit, test configurations 2B and 2C in Table 2 of AHAM PAC–1–2022.

For a dual-duct single-speed unit, test configurations 1A and 1B in Table 2 of AHAM PAC–1–2022.

For a dual-duct variable-speed unit: test configurations 1C and 1E in Table 2 of AHAM PAC–1–2022.

$Capacity_{SD}$, $Capacity_{SD_Full}$, $Capacity_{SD_Low}$, $Capacity_{DD_95}$, $Capacity_{DD_83}$, $Capacity_{DD_95_Full}$, and $Capacity_{DD_83_Low}$ = cooling capacity, in Btu/h, measured in testing at test configuration 2A, 2B, 2C, 1A, 1B, 1C, and 1E of Table 2 in section 8.1 of AHAM PAC–1–2022, respectively.

Q_{duct_SD}, $Q_{duct_SD_Full}$, $Q_{duct_SD_Low}$, $Q_{duct_DD_95}$, $Q_{duct_DD_83}$, $Q_{duct_DD_95_Full}$, and $Q_{duct_DD_83_Low}$ = duct heat transfer while operating in cooling mode for each duct configuration, compressor speed (where applicable) and temperature condition (where applicable), calculated in section 9.1 of AHAM PAC–1–2022, in Btu/h.

$Q_{infiltration_95}$, $Q_{infiltration_83}$, and $Q_{infiltration_83_Low}$ = total infiltration air heat transfer in cooling mode, in Btu/h, for each of the following compressor speed and duct configuration combinations:

For a single-duct single-speed unit, use $Q_{infiltration_95}$ and $Q_{infiltration_83}$ as calculated for a single-duct single-speed unit in section 9.2 of AHAM PAC–1–2022.

For a single-duct variable-speed unit, use $Q_{infiltration_95}$ and $Q_{infiltration_83_Low}$ as calculated for a single-duct variable-speed unit in section 9.2 of AHAM PAC–1–2022.

For a dual-duct single-speed unit, use $Q_{infiltration_95}$ and $Q_{infiltration_83}$ as calculated for a dual-duct single-speed unit in section 9.2 of AHAM PAC–1–2022.

For a dual-duct variable-speed unit, use $Q_{infiltration_95}$ and $Q_{infiltration_83_Low}$ as calculated for a dual-duct variable-speed unit in section 9.2 of AHAM PAC–1–2022.

0.6000 and 0.5363 = empirically-derived load-based capacity adjustment factor for a single-duct and dual-duct single-speed unit, respectively, when operating at test conditions 2A and 1B.

* * * * *

■ 11. Amend § 430.32 by revising paragraph (a)(1), the introductory text to (d)(1), and paragraph (d)(2) to read as follows:

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

* * * * *

(a) * * *

(1) The following standards apply to products manufactured on or after September 15, 2014, and before the 2029/2030 compliance dates depending on product class (see paragraphs (a)(2) and (a)(3) of this section).

TABLE 1 TO PARAGRAPH (a)(1)

Product class	Equations for maximum energy use (kWh/yr)	
	based on AV (ft^3)	based on av (L)
1. Refrigerators and refrigerator-freezers with manual defrost	7.99AV + 225.0	0.282av + 225.0
1A. All-refrigerators—manual defrost	6.79AV + 193.6	0.240av + 193.6
2. Refrigerator-freezers—partial automatic defrost	7.99AV + 225.0	0.282av + 225.0
3. Refrigerator-freezers—automatic defrost with top-mounted freezer without an automatic icemaker	8.07AV + 233.7	0.285av + 233.7
3–BI. Built-in refrigerator-freezer—automatic defrost with top-mounted freezer without an automatic ice-maker	9.15AV + 264.9	0.323av + 264.9
3I. Refrigerator-freezers—automatic defrost with top-mounted freezer with an automatic icemaker without through-the-door ice service	8.07AV + 317.7	0.285av + 317.7
3I–BI. Built-in refrigerator-freezers—automatic defrost with top-mounted freezer with an automatic ice-maker without through-the-door ice service	9.15AV + 348.9	0.323av + 348.9
3A. All-refrigerators—automatic defrost	7.07AV + 201.6	0.250av + 201.6
3A–BI. Built-in All-refrigerators—automatic defrost	8.02AV + 228.5	0.283av + 228.5
4. Refrigerator-freezers—automatic defrost with side-mounted freezer without an automatic icemaker	8.51AV + 297.8	0.301av + 297.8
4–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer without an automatic icemaker	10.22AV + 357.4	0.361av + 357.4
4I. Refrigerator-freezers—automatic defrost with side-mounted freezer with an automatic icemaker without through-the-door ice service	8.51AV + 381.8	0.301av + 381.8
4I–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer with an automatic ice-maker without through-the-door ice service	10.22AV + 441.4	0.361av + 441.4
5. Refrigerator-freezers—automatic defrost with bottom-mounted freezer without an automatic icemaker	8.85AV + 317.0	0.312av + 317.0
5–BI. Built-In Refrigerator-freezers—automatic defrost with bottom-mounted freezer without an automatic icemaker	9.40AV + 336.9	0.332av + 336.9
5I. Refrigerator-freezers—automatic defrost with bottom-mounted freezer with an automatic icemaker without through-the-door ice service	8.85AV + 401.0	0.312av + 401.0
5I–BI. Built-In Refrigerator-freezers—automatic defrost with bottom-mounted freezer with an automatic icemaker without through-the-door ice service	9.40AV + 420.9	0.332av + 420.9
5A. Refrigerator-freezer—automatic defrost with bottom-mounted freezer with through-the-door ice service	9.25AV + 475.4	0.327av + 475.4
5A–BI. Built-in refrigerator-freezer—automatic defrost with bottom-mounted freezer with through-the-door ice service	9.83AV + 499.9	0.347av + 499.9
6. Refrigerator-freezers—automatic defrost with top-mounted freezer with through-the-door ice service	8.40AV + 385.4	0.297av + 385.4
7. Refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service	8.54AV + 432.8	0.302av + 431.1
7–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service	10.25AV + 502.6	0.362av + 502.6
8. Upright freezers with manual defrost	5.57AV + 193.7	0.197av + 193.7
9. Upright freezers with automatic defrost without an automatic icemaker	8.62AV + 228.3	0.305av + 228.3
9I. Upright freezers with automatic defrost with an automatic icemaker	8.62AV + 312.3	0.305av + 312.3
9–BI. Built-In Upright freezers with automatic defrost without an automatic icemaker	9.86AV + 260.9	0.348av + 260.6
9I–BI. Built-In Upright freezers with automatic defrost with an automatic icemaker	9.86AV + 344.9	0.348av + 344.9
10. Chest freezers and all other freezers except compact freezers	7.29AV + 107.8	0.257av + 107.8
10A. Chest freezers with automatic defrost	10.24AV + 148.1	0.362av + 148.1
11. Compact refrigerators and refrigerator-freezers with manual defrost	9.03AV + 252.3	0.319av + 252.3
11A. Compact refrigerators and refrigerator-freezers with manual defrost	7.84AV + 219.1	0.277av + 219.1
12. Compact refrigerator-freezers—partial automatic defrost	5.91AV + 335.8	0.209av + 335.8
13. Compact refrigerator-freezers—automatic defrost with top-mounted freezer	11.80AV + 339.2	0.417av + 339.2
13I. Compact refrigerator-freezers—automatic defrost with top-mounted freezer with an automatic ice-maker	11.80AV + 423.2	0.417av + 423.2
13A. Compact all-refrigerator—automatic defrost	9.17AV + 259.3	0.324av + 259.3
14. Compact refrigerator-freezers—automatic defrost with side-mounted freezer	6.82AV + 456.9	0.241av + 456.9
14I. Compact refrigerator-freezers—automatic defrost with side-mounted freezer with an automatic ice-maker	6.82AV + 540.9	0.241av + 540.9
15. Compact refrigerator-freezers—automatic defrost with bottom-mounted freezer	11.80AV + 339.2	0.417av + 339.2
15I. Compact refrigerator-freezers—automatic defrost with bottom-mounted freezer with an automatic ice-maker	11.80AV + 423.2	0.417av + 423.2
16. Compact upright freezers with manual defrost	8.65AV + 225.7	0.306av + 225.7
17. Compact upright freezers with automatic defrost	10.17AV + 351.9	0.359av + 351.9
18. Compact chest freezers	9.25AV + 136.8	0.327av + 136.8

AV = Total adjusted volume, expressed in ft^3, as determined in appendices A and B to subpart B of this part.
av = Total adjusted volume, expressed in Liters.

* * * * *

(d) * * *

(1) The uniform energy factor of water heaters manufactured before May 6, 2029, shall not be less than the following:

* * * * *

(2) The uniform energy factor of water heaters manufactured on or after May 6, 2029, shall not be less than the following:

TABLE 14 TO PARAGRAPH (d)(2)

Product class	Effective storage volume and input rating (if applicable)	Draw pattern	Uniform energy factor *
Gas-fired Storage Water Heater	<20 gal	Very Small	$0.2062 - (0.0020 \times V_{eff})$
		Low	$0.4893 - (0.0027 \times V_{eff})$
		Medium	$0.5758 - (0.0023 \times V_{eff})$
		High	$0.6586 - (0.0020 \times V_{eff})$
	≥20 gal and ≤55 gal	Very Small	$0.3925 - (0.0020 \times V_{eff})$
		Low	$0.6451 - (0.0019 \times V_{eff})$
		Medium	$0.7046 - (0.0017 \times V_{eff})$
		High	$0.7424 - (0.0013 \times V_{eff})$
	>55 gal and ≤100 gal	Very Small	$0.6470 - (0.0006 \times V_{eff})$
		Low	$0.7689 - (0.0005 \times V_{eff})$
		Medium	$0.7897 - (0.0004 \times V_{eff})$
		High	$0.8072 - (0.0003 \times V_{eff})$
	>100 gal	Very Small	$0.1482 - (0.0007 \times V_{eff})$
		Low	$0.4342 - (0.0017 \times V_{eff})$
		Medium	$0.5596 - (0.0020 \times V_{eff})$
		High	$0.6658 - (0.0019 \times V_{eff})$
Oil-fired Storage Water Heater	≤50 gal	Very Small	$0.2909 - (0.0012 \times V_{eff})$
		Low	$0.5730 - (0.0016 \times V_{eff})$
		Medium	$0.6478 - (0.0016 \times V_{eff})$
		High	$0.7215 - (0.0014 \times V_{eff})$
	>50 gal	Very Small	$0.1580 - (0.0009 \times V_{eff})$
		Low	$0.4390 - (0.0020 \times V_{eff})$
		Medium	$0.5389 - (0.0021 \times V_{eff})$
		High	$0.6172 - (0.0018 \times V_{eff})$
Very Small Electric Storage Water Heater	<20 gal	Very Small	$0.5925 - (0.0059 \times V_{eff})$
		Low	$0.8642 - (0.0030 \times V_{eff})$
		Medium	$0.9096 - (0.0020 \times V_{eff})$
		High	$0.9430 - (0.0012 \times V_{eff})$
Small Electric Storage Water Heater	≥20 gal and ≤35 gal	Very Small	$0.8808 - (0.0008 \times V_{eff})$
		Low	$0.9254 - (0.0003 \times V_{eff})$
Electric Storage Water Heaters	≥20 and ≤55 gal (excluding small electric storage water heaters).	Very Small	2.30
		Low	2.30
		Medium	2.30
		High	2.30
	>55 gal and ≤120 gal	Very Small	2.50
		Low	2.50
		Medium	2.50
		High	2.50
	>120 gal	Very Small	$0.3574 - (0.0012 \times V_{eff})$
		Low	$0.7897 - (0.0019 \times V_{eff})$
		Medium	$0.8884 - (0.0017 \times V_{eff})$
		High	$0.9575 - (0.0013 \times V_{eff})$
Tabletop Water Heater	<20 gal	Very Small	$0.5925 - (0.0059 \times V_{eff})$
		Low	$0.8642 - (0.0030 \times V_{eff})$
	≥20 gal	Very Small	$0.6323 - (0.0058 \times V_{eff})$
		Low	$0.9188 - (0.0031 \times V_{eff})$
Instantaneous Oil-fired Water Heater	<2 gal and ≤210,000 Btu/h	Very Small	0.61
		Low	0.61
		Medium	0.61
		High	0.61
	≥2 gal and ≤210,000 Btu/h	Very Small	$0.2780 - (0.0022 \times V_{eff})$
		Low	$0.5151 - (0.0023 \times V_{eff})$
		Medium	$0.5687 - (0.0021 \times V_{eff})$
		High	$0.6147 - (0.0017 \times V_{eff})$
Instantaneous Electric Water Heater	<2 gal	Very Small	0.91
		Low	0.91
		Medium	0.91
		High	0.92
	≥2 gal	Very Small	$0.8086 - (0.0050 \times V_{eff})$
		Low	$0.9123 - (0.0020 \times V_{eff})$
		Medium	$0.9252 - (0.0015 \times V_{eff})$
		High	$0.9350 - (0.0011 \times V_{eff})$
Grid-Enabled Water Heater	>75 gal	Very Small	$1.0136 - (0.0028 \times V_{eff})$
		Low	$0.9984 - (0.0014 \times V_{eff})$
		Medium	$0.9853 - (0.0010 \times V_{eff})$
		High	$0.9720 - (0.0007 \times V_{eff})$

* V_{eff} is the Effective Storage Volume (in gallons), as determined pursuant to § 429.17 of this chapter.

* * * * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 12. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 13. Amend § 431.96 by revising table 1 to paragraph (b) to read as follows:

§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.

* * * * *

(b) * * *

(2) * * *

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Equipment	Category	Cooling capacity or moisture removal capacity [1]	Energy efficiency descriptor	Use tests, conditions, and procedures in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Commercial Package Air Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h	SEER and HSPF	Appendix F to this subpart [2].	None.
Commercial Package Air Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h	SEER2 and HSPF2	Appendix F1 to this subpart [2].	None.
Commercial Package Air Conditioning and Heating Equipment.	Air-Cooled AC and HP (excluding double-duct AC and HP).	≥65,000 Btu/h and <760,000 Btu/h.	EER, IEER, and COP	Appendix A to this subpart [2].	None.
Commercial Package Air Conditioning and Heating Equipment.	Air-Cooled AC and HP (excluding double-duct AC and HP).	≥65,000 Btu/h and <760,000 Btu/h.	EER2, COP2, IVEC, and IVHE.	Appendix A1 to this subpart [2].	None.
Commercial Package Air Conditioning and Heating Equipment.	Double-duct AC and HP.	≥65,000 Btu/h and <300,000 Btu/h.	EER, IEER, and COP	Appendix A to this subpart [2].	None.
Commercial Package Air Conditioning and Heating Equipment.	Double-duct AC and HP.	≥65,000 Btu/h and <300,000 Btu/h.	EER2, COP2, IVEC, and IVHE.	Appendix A1 to this subpart [2].	None.
Commercial Package Air Conditioning and Heating Equipment.	Water-Cooled and Evaporatively-Cooled AC.	<760,000 Btu/h	EER and IEER	Appendix A to this subpart [2].	None.
Commercial Package Air Conditioning and Heating Equipment.	Water-Cooled and Evaporatively-Cooled AC.	<760,000 Btu/h	EER2 and IVEC	Appendix A1 to this subpart [2].	None.
Water-Source Heat Pumps.	HP	<760,000 Btu/h	EER and COP	Appendix C to this subpart [2].	None.
Water-Source Heat Pumps.	HP	<760,000 Btu/h	IEER and ACOP	Appendix C1 to this subpart [2].	None.
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Paragraph (g) of this section.	Paragraphs (c), (e), and (g).
Computer Room Air Conditioners.	AC	<760,000 Btu/h	SCOP	Appendix E to this subpart [2].	None.
Computer Room Air Conditioners.	AC	<760,000 Btu/h or <930,000 Btu/h [3].	NSenCOP	Appendix E1 to this subpart [2].	None.
Variable Refrigerant Flow Multi-split Systems.	AC	<65,000 Btu/h (3-phase).	SEER	Appendix F to this subpart [2].	None.
Variable Refrigerant Flow Multi-split Systems.	AC	<65,000 Btu/h (3-phase).	SEER2	Appendix F1 to this subpart [2].	None.
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	HP	<65,000 Btu/h (3-phase).	SEER and HSPF	Appendix F to this subpart [2].	None.
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	HP	<65,000 Btu/h (3-phase).	SEER2 and HSPF2	Appendix F1 to this subpart [2].	None.
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	AC and HP	≥65,000 Btu/h and <760,000 Btu/h.	EER and COP	Appendix D to this subpart [2].	None.
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	AC and HP	≥65,000 Btu/h and <760,000 Btu/h.	IEER and COP	Appendix D1 to this subpart [2].	None.
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP	<760,000 Btu/h	EER and COP	Appendix D to this subpart [2].	None.

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS—Continued

Equipment	Category	Cooling capacity or moisture removal capacity [1]	Energy efficiency descriptor	Use tests, conditions, and procedures in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP	<760,000 Btu/h	IEER and COP	Appendix D1 to this subpart [2].	None.
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Appendix G to this subpart [2].	None.
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	AC and HP	<760,000 Btu/h	EER, IEER, and COP	Appendix G1 to this subpart [2].	None.
Direct Expansion-Dedicated Outdoor Air Systems.	All	<324 lbs. of moisture removal/hr.	ISMRE2 and ISCOP2	Appendix B to this subpart.	None.

[1] Moisture removal capacity applies only to direct expansion-dedicated outdoor air systems.
[2] For equipment with multiple appendices listed in this table, consult the notes at the beginning of those appendices to determine the applicable appendix to use for testing.
[3] For upflow ducted and downflow floor-mounted computer room air conditioners, the test procedure in appendix E1 to this subpart applies to equipment with net sensible cooling capacity less than 930,000 Btu/h. For all other configurations of computer room air conditioners, the test procedure in appendix E1 to this subpart applies to equipment with net sensible cooling capacity less than 760,000 Btu/h.

* * * * *

■ 14. Amend § 431.192 by revising the headings to Table 1 and Table 2 to read as follows:

§ 431.192 Definitions.

* * * * *

Table 1 to the Definition of ''Special-Impedance Transformer''—Normal Impedance Ranges for Liquid-Immersed Transformers

* * * * *

Table 2 to the Definition of ''Special-Impedance Transformer''—Normal Impedance Ranges for Dry-Type Transformers

* * * * *

■ 15. Amend appendix C1 to subpart R of part 431 by revising section 3.4.12.2 to read as follows:

Appendix C1 to Subpart R of Part 431—Uniform Test Method for the Measurement of Net Capacity and AWEF2 of Walk-In Cooler and Walk-In Freezer Refrigeration Systems

* * * * *

3. * * *

3.4 * * *

3.4.12 * * *

3.4.12.2 Calculate the AWEF2 as follows:

$$AWEF2 = \frac{\sum_{i=1}^{n} \dot{B}L \cdot n_j}{\sum_{j=1}^{n} \left[\dot{E}_{ss}(t_j) \cdot LF(t_j) + \left(\dot{E}F_{comp,off} + \dot{E}_{cu,off}(t_j)\right) \cdot \left(1 - LF(t_j)\right)\right] \cdot n_j}$$

Where:

$\dot{E}_{ss}(t_j$, in W, is the system power input for temperature t_j, calculated as described in section 7.4.2 of AHRI 1250–2020;

$\dot{E}_{cu,off}(t_j$, in W, is the condensing unit off-cycle power consumption for temperature t_j, determined as indicated in section 3.4.3.3 of this appendix; and

n_j are the hours for temperature bin j.

* * * * *

■ 16. Amend § 431.465 by revising the section heading to read as follows:

§ 431.465 Pumps energy conservation standards and their compliance dates.

* * * * *

■ 17. Amend appendix A to subpart Y of part 431 by revising sections IV.D.2 and VI.D.2. to read as follows:

Appendix A to Subpart Y of Part 431—Uniform Test Method for the Measurement of Energy Consumption of Pumps

* * * * *

IV. * * *

IV.D * * *

IV.D.2 Determine the BEP flow rate as the flow rate at the operating point of maximum overall efficiency on the pump efficiency curve, as determined in accordance with section 40.6.6.3 of HI 40.6–2021, where the overall efficiency is the ratio of the pump power output divided by the driver power input, as specified in Table 40.6.2 of HI 40.6–2021, disregarding the calculations provided in section 40.6.6.2 of HI 40.6–2021.

* * * * *

VI. * * *

VI.D * * *

VI.D.2 Determine the BEP flow rate as the flow rate at the operating point of maximum overall efficiency on the pump efficiency curve, as determined in accordance with section 40.6.6.3 of HI 40.6–2021, where the overall efficiency is the ratio of the pump power output divided by the driver power input, as specified in Table 40.6.2 of HI 40.6–2021, disregarding the calculations provided in section 40.6.6.2 of HI 40.6–2021.

* * * * *

[FR Doc. 2025–00987 Filed 1–17–25; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–2636; Airspace Docket No. 24–AGL–33]

RIN 2120–AA66

Modification of Class E Airspace; Crosby Municipal Airport, Crosby, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the administrative portions of the Class E airspace legal description for Crosby Municipal Airport, Crosby, ND. This action does not change the airspace boundaries or operating requirements.

DATES: Effective date 0901 UTC, April 17, 2025. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of this final rule and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the administrative portions of the Class E airspace legal descriptions to support visual flight rules (VFR) and instrument flight rules (IFR) operations at Crosby Municipal Airport, Crosby, ND.

Incorporation by Reference

Class E5 airspace areas are published in paragraph 6000 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11J, dated July 31, 2024, and effective September 15, 2024. FAA Order JO 7400.11J is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by modifying the administrative portions of the Class E airspace legal descriptions for Crosby Municipal Airport, Crosby, ND. Crosby Municipal Airport's geographic location within line 3 of the Class E legal descriptions is updated to match the FAA database. Additionally, the redundant phrase ''(Canada/United States Boundary)'' is removed from the body of the legal description. These administrative updates do not affect the airspace boundaries or operating requirements; therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of FAA Order JO 7400.11J, Airspace Designations and Reporting Points, dated July 31, 2024, and effective September 15, 2024, is amended as follows:

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

* * * * *

AGL ND E5 Crosby, ND [Amended]

Crosby Municipal Airport, ND
(Lat. 48°55′42″ N, long. 103°17′51″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the airport, excluding that airspace north of lat. 49°00′00″ N.

* * * * *

Issued in Des Moines, Washington, on January 14, 2025.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2025–01367 Filed 1–17–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, 529, and 558

[Docket No. FDA–2024–N–0002]

New Animal Drugs; Approval of New Animal Drug Applications; Withdrawal of Approval of New Animal Drug Applications; Change of Sponsor; Change of Sponsor Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the animal drug regulations to reflect application-related actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during October, November, and December 2024. The animal drug regulations are also being amended to improve their accuracy and readability.

DATES: This rule is effective January 21, 2025.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–5689, *george.haibel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Approval of New Animal Drug Applications

FDA is amending the animal drug regulations to reflect approval actions for NADAs and ANADAs during October, November, and December 2024, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOIA Summaries) under the Freedom of Information Act (FOIA). These documents, along with marketing exclusivity and patent information, may be obtained at Animal Drugs @FDA: *https://animaldrugsatfda.fda.gov/adafda/views/#/search*.

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING OCTOBER, NOVEMBER, AND DECEMBER 2024 REQUIRING EVIDENCE OF SAFETY AND/OR EFFECTIVENESS

Date of approval	File No.	Sponsor (drug labeler code [1])	Product name	Effect of the action	21 CFR section
October 7, 2024	141–554	Boehringer Ingelheim Animal Health USA, Inc. (000010)	NEXGARD PLUS (afoxolaner, moxidectin, and pyrantel chewable tablets).	Supplemental approval for the treatment and control of Asian longhorned tick infestations for 1 month in dogs and puppies.	520.35
October 7, 2024	141–581	Elanco US Inc. (058198)	CREDELIO QUATTRO (lotilaner, moxidectin, praziquantel, and pyrantel chewable tablets.	Original approval for the prevention of heartworm disease and for the treatment and control of roundworm, hookworm, and tapeworm infections. Kills adult fleas and is indicated for the treatment and prevention of flea infestations and the treatment and control of tick infestations for 1 month in dogs and puppies.	520.1287
October 18, 2024	200–748	Huvepharma EOOD (016592)	PENNCHLOR (chlortetracycline Type A medicated article) and MONOVET (monensin) Type A medicated article) to be used in the manufacture of Type B and Type C medicated feeds.	Original approval as a generic copy of NADA 141–564.	558.128
October 23, 2024	141–589	Elanco US Inc. (058198)	EXPERIOR (lubabegron Type A medicated article) and MGA (melengestrol acetate Type A medicated article) to be used in the manufacture of Type C medicated feeds.	Original approval for increased rate of weight gain, improved feed efficiency, suppression of estrus (heat), and for reduction of ammonia gas emissions per pound of live weight and hot carcass weight in growing beef heifers fed in confinement for slaughter during the last 14 to 91 days on feed.	558.330
October 25, 2024	141–590	Do.	EXPERIOR (lubabegron Type A medicated article), RUMENSIN (monensin Type A medicated article), and MGA (melengestrol acetate Type A medicated article) to be used in the manufacture of Type C medicated feeds.	Original approval for increased rate of weight gain, improved feed efficiency, suppression of estrus (heat), for reduction of ammonia gas emissions per pound of live weight and hot carcass weight, and for the prevention and control of coccidiosis caused by *Eimeria bovis* and *Eimeria zuernii* in growing beef heifers fed in confinement for slaughter during the last 14 to 91 days on feed.	558.330

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING OCTOBER, NOVEMBER, AND DECEMBER 2024 REQUIRING EVIDENCE OF SAFETY AND/OR EFFECTIVENESS—Continued

Date of approval	File No.	Sponsor (drug labeler code [1])	Product name	Effect of the action	21 CFR section
October 25, 2024	141–591	Do.	EXPERIOR (lubabegron Type A medicated article), RUMENSIN (monensin Type A medicated article), TYLAN (tylosin Type A medicated article), and MGA (melengestrol acetate Type A medicated article) to be used in the manufacture of Type C medicated feeds.	Original approval for increased rate of weight gain, improved feed efficiency, suppression of estrus (heat), for reduction of ammonia gas emissions per pound of live weight and hot carcass weight, and for the prevention and control of coccidiosis caused by *Eimeria bovis* and *Eimeria zuernii* and for reduction of incidence of liver abscesses associated with *Fusobacterium necrophorum* and *Arcanobacterium pyogenes* in growing beef heifers fed in confinement for slaughter during the last 14 to 91 days on feed.	558.625
November 6, 2024	141–521	Zoetis Inc. (054771)	SIMPARICA TRIO (sarolaner, moxidectin, and pyrantel chewable tablets).	Supplemental approval for the treatment and control of tick infestations with Asian longhorned tick for 1 month in dogs and puppies.	520.2090
November 13, 2024 ..	141–502	Do.	REVOLUTION PLUS (selamectin and sarolaner topical solution).	Supplemental approval for the prevention of tapeworm infections as a direct result of killing vector fleas on the treated cat for 1 month in cats and kittens.	524.2099
November 14, 2024 ..	200–803	Phibro Animal Health Corp. (066104)	PAQFLOR (florfenicol) Type A Medicated Article to be used in the manufacture of Type C medicated feeds.	Original approval as a generic copy of NADA 141–246.	558.261
November 18, 2024 ..	200–793	Parnell Technologies, Pty., Ltd. (068504)	PROPOFOLVET MULTIDOSE (propofol injectable emulsion).	Original approval as a generic copy of NADA 141–098.	522.2005
November 18, 2024 ..	200–805	Virbac AH, Inc. (051311)	MEL 500 (melengestrol acetate Type A liquid medicated article) to be used in the manufacture of Type C medicated feeds.	Original approval as a generic copy of NADA 039–402.	558.342
November 20, 2024 ..	200–636	Bimeda Animal Health, Ltd. (061133)	DORACIDE (doramectin topical solution)	Original approval as a generic copy of NADA 141–095.	524.770
November 22, 2024 ..	141–452	Zoetis Inc. (054771)	SIMPARICA (sarolaner) Chewable Tablet.	Supplemental approval for the treatment and control of tick infestations with Asian longhorned tick for 1 month in dogs and puppies.	520.2086
November 25, 2024 ..	141–532	Intervet, Inc. (000061)	BRAVECTO 1–MONTH (fluralaner) Chewable Tablet.	Supplemental approval for the treatment and control of Asian longhorned tick infestations for 1 month in dogs and puppies.	520.998
December 19, 2024 ..	141–043	Zoetis Inc. (054771)	SYNOVEX CHOICE and SYNOVEX PRIMER (trenbolone acetate and estradiol benzoate implants) Implants.	Supplemental approval of both products for increased rate of weight gain in growing beef steers and heifers on pasture (stocker, feeder, and slaughter).	522.2478

[1] See § 510.600(c) (21 CFR 510.600(c)) for sponsor addresses.

II. Withdrawal of Approval of New Animal Drug Applications

Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767–1861 (drug labeler code (054925) requested that FDA withdraw approval of NADA 140–810 for DERMA–VET (nystatin, neomycin sulfate, thiostrepton, triamcinolone acetonide) Ointment because the product is no longer manufactured or marketed. Accordingly, approval of NADA 140–810 was withdrawn effective December 23, 2024. The animal drug regulations do not require amendment as the sponsor's drug labeler code is not codified in 21 CFR 524.1600a.

Mylan Institutional LLC, a Viatris Company, 3711 Collins Ferry Rd., Morgantown, WV 26505 (drug labeler code 063286) requested that FDA withdraw approval of ANADA 200–257 for Ketamine HCL (ketamine hydrochloride injection, USP) Injectable Solution because the product is no longer manufactured or marketed. Accordingly, approval of ANADA 200–257 was withdrawn effective June 29, 2023. The animal drug regulations do not require amendment as the sponsor's drug labeler code was removed from 21 CFR 522.1222 in a rule that published August 16, 2023 (88 FR 55559 at 55564).

III. Changes of Sponsor

The sponsors of the approved applications listed in table 2 have informed FDA that they have transferred ownership of, and all rights and interest in, these applications to another sponsor. The regulations cited in table 2 are amended to reflect these actions.

TABLE 2—APPLICATIONS FOR WHICH OWNERSHIP WAS TRANSFERRED TO ANOTHER SPONSOR DURING OCTOBER, NOVEMBER, AND DECEMBER 2024

File No.	Product name	Transferring sponsor (drug labeler code)	New sponsor (drug labeler code)	21 CFR section
141–339	OVUGEL (triptorelin acetate) Gel	United-AH II LLC (051233)	Aurora Pharmaceutical, Inc. (051072)	529.2620
200–233	SUPERIORBUTE (phenylbutazone) Powder.	Superior Equine Pharmaceuticals, Inc. (027053)	Noble Pharma, LLC (086119)	520.1720e

IV. Change of Sponsor Address

Pharmacosmos, Inc. (drug labeler code 042552 in § 510.600(c)) has informed FDA that it has changed its address to 120 Headquarters Plz., Morristown, NJ 07960. The entries in § 510.600(c) are amended to reflect this action.

V. Technical Amendments

FDA is making the following amendments to improve the accuracy and readability of the animal drug regulations.

- § 510.600(c) is amended to remove entries for Superior Equine Pharmaceuticals, Inc. and United-AH II, LLC from the lists of sponsors of approved applications as these firms are no longer sponsors of an approved application.
- 21 CFR 522.2630(b) is amended to present the sequence of drug labeler codes for tulathromycin injectable solutions.

VI. Legal Authority

This final rule is issued under section 512(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C.360b(i)). Although deemed a rule pursuant to the FD&C Act, this document does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a ''rule of particular applicability'' and is not subject to the congressional review requirements in 5 U.S.C. 801–808. Likewise, this is not a rule subject to Executive Order 12866.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, 524, and 529

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 510, 520, 522, 524, 529, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600:

■ a. In the table in paragraph (c)(1), revise the entry for ''Pharmacosmos, Inc.'' and remove the entries for ''Superior Equine Pharmaceuticals, Inc.'' and ''United-AH II, LLC''; and

■ b. In the table in paragraph (c)(2):

■ i. Remove the entry for ''027053'';

■ ii. Revise the entry for ''042552''; and

■ iii. Remove the entry for ''051233''.

The revision reads as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Pharmacosmos, Inc., 120 Headquarters Plz., Morristown, NJ 07960	042552
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
042552	Pharmacosmos, Inc., 120 Headquarters Plz., Morristown, NJ 07960.
* * * * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 4. In § 520.35, revise paragraphs (a) and (c)(2) to read as follows:

§ 520.35 Afoxolaner, moxidectin, and pyrantel.

(a) *Specifications.* Each chewable tablet contains:

(1) 9.375 milligrams (mg) afoxolaner, 45 micrograms (mcg) moxidectin, and 18.75 mg pyrantel (as pamoate salt);

(2) 18.75 mg afoxolaner, 90 mcg moxidectin, and 37.5 mg pyrantel (as pamoate salt);

(3) 37.5 mg afoxolaner, 180 mcg moxidectin, and 75 mg pyrantel (as pamoate salt);

(4) 75 mg afoxolaner, 360 mcg moxidectin, and 150 mg pyrantel (as pamoate salt); or

(5) 150 mg afoxolaner, 720 mcg moxidectin, and 300 mg pyrantel (as pamoate salt).

* * * * *

(c) * * *

(2) *Indications for use.* For the prevention of heartworm disease caused by *Dirofilaria immitis* and for the treatment and control of adult hookworm (*Ancylostoma caninum, Ancylostoma braziliense,* and *Uncinaria stenocephala*) and roundworm (*Toxocara canis* and *Toxascaris leonina*) infections. Kills adult fleas and is indicated for the treatment and prevention of flea infestations (*Ctenocephalides felis*) and the treatment and control of *Ixodes scapularis* (black-legged tick), *Rhipicephalus sanguineus* (brown dog tick), *Dermacentor variabilis* (American dog tick), *Amblyomma americanum* (lone star tick), and *Haemaphysalis longicornis* (longhorned tick) infestations for 1 month in dogs and puppies 8 weeks of age and older, weighing 4 pounds of body weight or greater.

* * * * *

■ 5. In § 520.998, revise paragraph (c)(2)(ii) to read as follows:

§ 520.998 Fluralaner.

* * * * *

(c) * * *

(2) * * *

(ii) *Chewable tablets described in paragraph (a)(2) of this section.* Kills adult fleas; for the treatment and prevention of flea infestations (*C. felis*), and the treatment and control of tick infestations (*I. scapularis* (black-legged tick), *D. variabilis* (American dog tick), *R. sanguineus* (brown dog tick), and *H. longicornis* (Asian longhorned tick)) for 1 month in dogs and puppies 8 weeks of age and older, and weighing 4.4 lb or greater; and for the treatment and control of *A. americanum* (lone star tick) infestations for 1 month in dogs and puppies 6 months of age and older, and weighing 4.4 lb or greater.

* * * * *

■ 6. Add § 520.1287 to read as follows:

§ 520.1287 Lotilaner, moxidectin, praziquantel, and pyrantel.

(a) *Specifications.* Each chewable tablet contains:

(1) 56.25 milligrams (mg) lotilaner, 0.056 mg moxidectin, 14.25 mg praziquantel, and 14.25 mg pyrantel (as pamoate salt);

(2) 112.5 mg lotilaner, 0.113 mg moxidectin, 28.5 mg praziquantel, and 28.5 mg pyrantel (as pamoate salt);

(3) 225 mg lotilaner, 0.225 mg moxidectin, 57 mg praziquantel, and 57 mg pyrantel (as pamoate salt);

(4) 450 mg lotilaner, 0.45 mg moxidectin, 114 mg praziquantel, and 114 mg pyrantel (as pamoate salt); or

(5) 900 mg lotilaner, 0.9 mg moxidectin, 228 mg praziquantel, and 228 mg pyrantel (as pamoate salt).

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer orally once a month, at the minimum dosage of 9 mg/lb (20 mg/kg) lotilaner, 0.009 mg/lb (0.02 mg/kg) moxidectin, 2.28 mg/lb (5 mg/kg) praziquantel, and 2.28 mg/lb (5 mg/kg) pyrantel (as pamoate salt).

(2) *Indications for use.* For the prevention of heartworm disease caused by *Dirofilaria immitis* and for the treatment and control of roundworm (immature adult and adult *Toxocara canis* and adult *Toxascaris leonina*), hookworm (adult *Uncinaria stenocephala*), and tapeworm (*Dipylidium caninum, Taenia pisiformis* and *Echinococcus granulosus*) infections. Kills adult fleas and is indicated for the treatment and prevention of flea infestations (*Ctenocephalides felis*) and the treatment and control of tick infestations (*Amblyomma americanum* (lone star tick), *Dermacentor variabilis* (American dog tick), *Ixodes scapularis* (black-legged tick), and *Rhipicephalus sanguineus* (brown dog tick)) for 1 month in dogs and puppies 8 weeks of age and older, and weighing 3.3 pounds or greater.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.1720e [Amended]

■ 7. In § 520.1720e, in paragraph (b)(1), remove the text ''027053'' and in its place add the text ''086119''.

■ 8. In § 520.2086, revise paragraphs (c)(1) and (2) to read as follows:

§ 520.2086 Sarolaner.

* * * * *

(c) * * *

(1) *Amount.* Administer orally once a month at the recommended minimum dosage of 0.91 mg/lb (2 mg/kg).

(2) *Indications for use.* Kills adult fleas, and is indicated for the treatment and prevention of flea infestations (*Ctenocephalides felis*), and the treatment and control of tick infestations (*Amblyomma americanum* (lone star tick), *Amblyomma maculatum* (Gulf Coast tick), *Dermacentor variabilis* (American dog tick), *Ixodes scapularis* (black-legged tick), *Rhipicephalus sanguineus* (brown dog tick), and *Haemaphysalis longicornis* (Asian longhorned tick)) for 1 month in dogs 6 months of age or older and weighing 2.8 pounds or greater. For the prevention of *Borrelia burgdorferi* infections as a direct result of killing *Ixodes scapularis* vector ticks.

* * * * *

■ 9. In § 520.2090, revise paragraph (c)(2) to read as follows:

§ 520.2090 Sarolaner, moxidectin, and pyrantel.

* * * * *

(c) * * *

(2) *Indications for use.* For the prevention of heartworm disease caused by *Dirofilaria immitis* and for the treatment and control of roundworm (immature adult and adult *Toxocara canis* and adult *Toxascaris leonina*) and hookworm (L4, immature adult, and adult *Ancylostoma caninum* and adult *Uncinaria stenocephala*) infections. Kills adult fleas (*Ctenocephalides felis*) and is indicated for the treatment and prevention of flea infestations, and the treatment and control of tick infestations with *Amblyomma americanum* (lone star tick), *Amblyomma maculatum* (Gulf Coast tick), *Dermacentor variabilis* (American dog tick), *Ixodes scapularis* (black-legged tick), *Rhipicephalus sanguineus* (brown dog tick), and *Haemaphysalis longicornis* (Asian longhorned tick) for 1 month in dogs and puppies 8 weeks of age and older, and weighing 2.8 pounds or greater. For the prevention of *Borrelia burgdorferi* infections as a direct result of killing *Ixodes scapularis* vector ticks.

* * * * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 10. The authority citation for part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 11. In § 522.2005:

■ a. Revise paragraph (b);

■ b. Revise the heading for paragraph (c);

■ c. Revise paragraph (c)(2); and

■ d. Add paragraph (d).

The revisions and addition read as follows:

§ 522.2005 Propofol.

* * * * *

(b) * * *

(1) No. 086064 for use as in paragraphs (c)(1), (c)(2)(i), (c)(3), (d)(1), (d)(2)(i), and (d)(3) of this section.

(2) No. 054771 for use as in paragraphs (c)(1), (c)(2)(ii), (c)(3), (d)(1), (d)(2)(ii), and (d)(3) of this section.

(3) Nos. 054771 and 068504 for use as in paragraphs (c)(1), (c)(2)(iii), and (c)(3) of this section.

* * * * *

(c) *Conditions of use in dogs*—

* * * * *

(2) *Indications for use.* (i) As a single injection to provide general anesthesia for short procedures; for induction and maintenance of general anesthesia using incremental doses to effect; and for induction of general anesthesia where maintenance is provided by inhalant anesthetics.

(ii) For induction of general anesthesia; for maintenance of anesthesia for up to 20 minutes; and for induction of general anesthesia followed by maintenance with an inhalant anesthetic.

(iii) For induction and maintenance of general anesthesia; and for induction of general anesthesia followed by maintenance with an inhalant anesthetic.

* * * * *

(d) *Conditions of use in* cats—(1) *Amount.* Administer by intravenous injection according to label directions. The use of preanesthetic medication reduces propofol dose requirements.

(2) *Indications for use.* (i) As a single injection to provide general anesthesia for short procedures; for induction and maintenance of general anesthesia using incremental doses to effect; and for induction of general anesthesia where maintenance is provided by inhalant anesthetics.

(ii) For induction and maintenance of general anesthesia; and for induction of general anesthesia followed by maintenance with an inhalant anesthetic.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 12. In § 522.2478, revise paragraph (d)(2) to read as follows:

§ 522.2478 Trenbolone acetate and estradiol benzoate.

* * *

(d) * * *

(2) *Growing beef steers and heifers on pasture (stocker, feeder, and slaughter)*—(i) *Amounts and indications for use.* (A) An implant containing 50 mg trenbolone acetate and 7 mg estradiol benzoate as described in paragraph (a)(1)(i) of this section for increased rate of weight gain.

(B) An implant containing 100 mg trenbolone acetate and 14 mg estradiol benzoate as described in paragraph (a)(1)(ii) of this section for increased rate of weight gain.

(C) An extended-release implant containing 150 mg trenbolone acetate and 21 mg estradiol benzoate as described in paragraph (a)(2)(i) of this section for increased rate of weight gain for up to 200 days.

(ii) *Limitations.* Implant pellets subcutaneously in ear only. Not approved for repeated implantation (reimplantation) with this or any other cattle ear implant in growing beef steers and heifers on pasture (stocker, feeder, and slaughter). Safety and effectiveness following reimplantation have not been evaluated. Do not use in beef calves less than 2 months of age, dairy calves, and veal calves because effectiveness and safety have not been established. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in dairy cows or in animals intended for subsequent breeding. Use in these cattle may cause drug residues in milk and/or in calves born to these cows.

* * * * *

§ 522.2630 [Amended]

■ 13. In § 522.2630, in paragraphs (b)(1) and (2), remove the text ''and 068504, 069043'' and add in its place the text ''068504, and 069043''.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 14. The authority citation for part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 15. In § 524.770, revise paragraph (b) to read as follows:

§ 524.770 Doramectin.

* * * * *

(b) *Sponsors.* See Nos. 051072, 054771, and 061133 in § 510.600(c) of this chapter.

* * * * *

■ 16. In § 524.2099, revise paragraph (c)(2) to read as follows:

§ 524.2099 Selamectin and sarolaner.

* * * * *

(c) * * *

(2) *Indications for use.* For the prevention of heartworm disease caused by *Dirofilaria immitis,* the treatment and control of roundworm (*Toxocara cati*) and intestinal hookworm (*Ancylostoma tubaeforme*) infections, and the treatment and control of ear mite (*Otodectes cynotis*) infestations. Kills adult fleas (*Ctenocephalides felis*) and is indicated for the treatment and prevention of flea infestations, the prevention of *Dipylidium caninum* (tapeworm) infections as a direct result of killing *Ctenocephalides felis* vector fleas on the treated cat, and the treatment and control of tick infestations with *Amblyomma americanum* (lone star tick), *Amblyomma maculatum* (Gulf Coast tick), *Dermacentor variabilis* (American dog tick), and *Ixodes scapularis* (black-legged tick) for 1 month in cats and kittens 8 weeks and older, and weighing 2.8 pounds or greater.

* * * * *

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 17. The authority citation for part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.2620 [Amended]

■ 18. In § 529.2620, in paragraph (b), remove the text ''051233'' and in its place add the text ''051072''.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 19. The authority citation for part 558 continues to read as follows:

Authority: 21 U.S.C. 354, 360b, 360ccc, 360ccc-1, 371.

■ 20. In § 558.128, revise paragraphs (e)(4)(xxi) and (xxii) to read as follows:

§ 558.128 Chlortetracycline.

* * * * *

(e) * * *

(4) * * *

Chlortetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(xxi) 400 to 2,000 g/ton	Monensin, 15 to 84	Replacement beef and dairy heifers: For treatment of bacterial enteritis caused by *Escherichia coli* and bacterial pneumonia caused by *Pasteurella multocida* susceptible to chlortetracycline; and for the prevention and control of coccidiosis caused by *Eimeria bovis* and *Eimeria zuernii*.	For replacement beef and dairy heifers not currently being fed monensin: Feed as the sole ration for not more than 5 days to provide 10 mg chlortetracycline per pound of body weight per day and 0.14 to 0.42 mg monensin per pound of body weight per day, depending upon severity of challenge, to provide 50 to 100 mg monensin per head per day in a minimum of 1 pound of Type C medicated feed. After 5 days, continue to feed monensin Type C medicated feed alone to provide 50 to 200 mg monensin per head per day in a minimum of 1 pound of Type C medicated feed.. For replacement beef and dairy heifers currently being fed monensin: Feed as the sole ration for not more than 5 days to provide 10 mg chlortetracycline per pound of body weight per day and 0.14 to 0.42 mg monensin per pound of body weight per day, depending upon severity of challenge, to provide 50 to 200 mg monensin per head per day in a minimum of 1 pound of Type C medicated feed. After 5 days, continue to feed monensin Type C medicated feed alone. This drug is not approved for use in female dairy cattle 20 months of age or older, including dry dairy cows. Use in these cattle may cause drug residues in milk and/or in calves born to these cows. Monensin as provided by No. 058198 or 016592; chlortetracycline by No. 069254 in § 510.600(c) of this chapter.	069254, 016592
(xxii) 400 to 2,000 g/ton.	Monensin, 15 to 400 ..	Replacement beef and dairy heifers: For treatment of bacterial enteritis caused by *Escherichia coli* and bacterial pneumonia caused by *Pasteurella multocida* susceptible to chlortetracycline; and for increased rate of weight gain.	For replacement beef and dairy heifers not currently being fed monensin: Feed as the sole ration for not more than 5 days to provide 10 mg chlortetracycline per pound of body weight per day and 50 to 100 mg monensin per head per day in a minimum of 1 pound of Type C medicated feed. After 5 days, continue to feed monensin Type C medicated feed alone to provide 50 to 200 mg monensin per head per day in a minimum of 1 pound of Type C medicated feed.. For replacement beef and dairy heifers currently being fed monensin: Feed as the sole ration for not more than 5 days to provide 10 mg chlortetracycline per pound of body weight per day and 50 to 200 mg monensin per head per day in a minimum of 1 pound of Type C medicated feed. After 5 days, continue to feed monensin Type C medicated feed alone. This drug is not approved for use in female dairy cattle 20 months of age or older, including dry dairy cows. Use in these cattle may cause drug residues in milk and/or in calves born to these cows. Monensin as provided by No. 058198 or 016592; chlortetracycline by No. 069254 in § 510.600(c) of this chapter.	0692544, 0165924
*	*	*	*	*

* * * * *

■ 21. In § 558.261, revise paragraph (b) to read as follows:

§ 558.261 Florfenicol.

* * * * *

(b) *Sponsors.* See sponsor numbers as in § 510.600(c) of this chapter.

(1) No. 000061 for use of products described in paragraph (a) of this section as in paragraph (e) of this section.

(2) No. 066104 for use of product described in paragraph (a)(2) of this section as in paragraph (e)(2) of this section.

* * * * *

■ 22. In § 558.330:

■ a. Redesignate paragraph (d) as paragraph (e);

■ b. Add new paragraph (d); and

■ c. Revise newly redesignated paragraph (e).

The addition and revision read as follows:

§ 558.330 Lubabegron.

* * * * *

(d) *Special considerations.* Labeling shall bear the following caution statements:

(1) Lubabegron has not been approved for use in breeding animals because

safety and effectiveness have not been evaluated in these animals.

(2) Do not allow horses or other equines access to feed containing lubabegron.

(3) A decrease in dry matter intake may be noticed in some animals receiving lubabegron.

(e) *Conditions of use.* (1) It is used in cattle feed as follows:

Lubabegron (as lubabegron fumarate) in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(i) 1.25 to 4.54		Beef steers and heifers fed in confinement for slaughter: For reduction of ammonia gas emissions per pound of live weight and hot carcass weight during the last 14 to 91 days on feed.	Feed continuously as the sole ration to provide 13 to 90 mg lubabegron/head/day during the last 14 to 91 days on feed. See special labeling considerations in paragraph (d) of this section..	058198
(ii) 1.25 to 4.54	Melengestrol acetate, 0.25 to 2 g/ton.	Growing beef heifers fed in confinement for slaughter: For increased rate of weight gain, improved feed efficiency, suppression of estrus (heat), and for reduction of ammonia gas emissions per pound of live weight and hot carcass weight during the last 14 to 91 days on feed.	Melengestrol acetate Type C top-dress medicated feed (0.5 to 2 lb(s) per head per day) must be top dressed onto or mixed at feeding with a Type C medicated feed containing 1.25 to 4.54 g/ton lubabegron to provide 0.25 to 0.5 mg melengestrol acetate and 13 to 90 mg lubabegron per head per day. Feed as the sole ration during the last 14 to 91 days on feed. See special labeling considerations in paragraph (d) of this section and in § 558.342(d). Lubabegron fumarate as provided by No. 058198; melengestrol acetate as provided by No. 054771 in § 510.600(c) of this chapter..	058198
(iii) 1.25 to 4.54	Monensin, 5 to 40	Beef steers and heifers fed in confinement for slaughter: For reduction of ammonia gas emissions per pound of live weight and hot carcass weight and for improved feed efficiency during the last 14 to 91 days on feed.	Feed continuously as sole ration to provide 13 to 90 mg lubabegron/head/day and 50 to 480 mg monensin/head/day during the last 14 to 91 days on feed. No additional improvement in feed efficiency has been shown from feeding monensin at levels greater than 30 g/ton (360 mg monensin/head/day). See special labeling considerations in paragraph (d) of this section and in § 558.355(d). Lubabegron fumarate as provided by No. 058198; monensin as provided by No. 016592 or 058198 in § 510.600(c) of this chapter..	016592, 058198
(iv) 1.25 to 4.54	Monensin, 10 to 40	Beef steers and heifers fed in confinement for slaughter: For reduction of ammonia gas emissions per pound of live weight and hot carcass weight; and for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii* during the last 14 to 91 days on feed.	Feed continuously as the sole ration to provide 13 to 90 mg lubabegron/head/day and 0.14 to 0.42 mg monensin/lb body weight per day, depending upon severity of coccidiosis challenge, during the last 14 to 91 days on feed. See special labeling considerations in paragraph (d) of this section and in § 558.355(d). Lubabegron fumarate as provided by No. 058198; monensin as provided by No. 016592 or 058198 in § 510.600(c) of this chapter..	016592, 058198
(v) 1.25 to 4.54	Monensin, 10 to 40 and melengestrol acetate, 0.25 to 2.	Growing beef heifers fed in confinement for slaughter: For increased rate of weight gain, improved feed efficiency, suppression of estrus (heat), for reduction of ammonia gas emissions per pound of live weight and hot carcass weight, and for the prevention and control of coccidiosis caused by *Eimeria bovis* and *Eimeria zuernii* during the last 14 to 91 days on feed.	Melengestrol acetate Type C top-dress medicated feed (0.5 to 2 lb(s) per head per day) must be top dressed onto or mixed at feeding with a Type C medicated feed containing 1.25 to 4.54 g/ton lubabegron and 10 to 40 g/ton monensin, to provide 0.25 to 0.5 mg melengestrol acetate and 13 to 90 mg lubabegron per head per day, and 0.14 to 0.42 mg monensin per pound of body weight per day, depending upon severity of challenge, up to a maximum of 480 mg monensin per head per day. Feed as the sole ration during the last 14 to 91 days on feed. See special labeling considerations in paragraph (d) of this section, and in §§ 558.342(d) and 558.355(d). Lubabegron fumarate and monensin as provided by No. 058198; melengestrol acetate as provided by No. 054771 in § 510.600(c) of this chapter..	058198

(2) Lubabegron may also be used in combination with:

(i) [Reserved]

(ii) Tylosin as in § 558.625.

■ 23. In § 558.342:

■ a. Add paragraphs (b)(1) and (2); and

■ b. Revise paragraphs (e)(1)(i) and (ii).

The addition and revision read as follows:

§ 558.342 Melengestrol.

* * * * *

(b) * * *

(1) No. 054771 for use of products described in paragraph (a)(1) of this section:

(2) Nos. 016592, 051311, 054771, and 058198 for use of product described in paragraph (a)(2) of this section.

* * * * *

(e) * * *

(1) * * *

Melengestrol acetate in mg/head/day	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(i) 0.25 to 0.5		Heifers fed in confinement for slaughter: For increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat)..	Administer 0.5 to 2.0 pounds (lb)/head/day of medicated feed containing 0.125 to 1.0 mg melengestrol acetate/lb to provide 0.25 to 0.5 mg melengestrol acetate/head/day..	016592, 051311, 054771, 058198
(ii) 0.5		Heifers intended for breeding: For suppression of estrus (heat).	Administer 0.5 to 2.0 lb/head/day of Type C feed containing 0.25 to 1.0 mg melengestrol acetate/lb to provide 0.5 mg melengestrol acetate/head/day. Do not exceed 24 days of feeding.	016592, 051311, 054771, 058198
*	*	*	*	*

* * * * *

■ 24. In § 558.625:

■ a. Redesignate paragraphs (e)(2)(ix) through (xvii) as paragraphs (e)(2)(x) through (xviii); and

■ b. Add new paragraph (e)(2)(ix).

The addition reads as follows:

§ 558.625 Tylosin.

* * * * *

(e) * * *

(2) * * *

Tylosin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
*	*	*	*	*
(ix) 8 to 10	Monensin, 10 to 40 plus lubabegron (as lubebegron fumarate), 1.25 to 4.54, plus melengestrol acetate, 0.25 to 2.0.	Growing beef heifers fed in confinement for slaughter: For increased rate of weight gain, improved feed efficiency, suppression of estrus (heat), for reduction of ammonia gas emissions per pound of live weight and hot carcass weight, for the prevention and control of coccidiosis caused by *Eimeria bovis* and *Eimeria zuernii,* and for reduction of incidence of liver abscesses associated with *Fusobacterium necrophorum* and *Arcanobacterium pyogenes* during the last 14 to 91 days on feed.	Feed as the sole ration during the last 14 to 91 days on feed. Melengestrol acetate Type C top-dress medicated feed (0.5 to 2.0 lb per head per day) must be top dressed onto or mixed at feeding with a Type C medicated feed containing 8 to 10 g/ton tylosin, 1.25 to 4.54 g/ton lubabegron, and 10 to 40 g/ton monensin, to provide 0.25 to 0.5 mg melengestrol acetate, 60 to 90 mg tylosin per head per day, 13 to 90 mg lubabegron per head per day, and 0.14 to 0.42 mg monensin per pound of body weight per day, depending on severity of challenge, up to 480 mg monensin per head per day. See special labeling considerations in §§ 558.330(d), 558.342(d), and 558.355(d). Tylosin as provided by No. 016592 or 058198; lubabegron fumarate and monensin as provided by No. 058198; melengestrol acetate as provided in No. 054771 in § 510.600(c) of this chapter.	058198
*	*	*	*	*

Dated: January 14, 2025.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2025–01226 Filed 1–17–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 50

[Docket No. OAG 174; AG Order No. 6148–2025]

RIN 1105–AB61

Processes and Procedures for Issuance and Use of Guidance Documents

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Final rule.

SUMMARY: This rule finalizes without change an interim final rule by which the Department of Justice (''Department'') removed amendments to its regulations that were made during 2020 pursuant to the now-revoked Executive Order 13891, which had imposed limitations on the use of Department guidance documents in criminal and civil enforcement actions brought by the Department.

DATES: This rule is effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department

of Justice, telephone (202) 514–8059 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Overview

This rule finalizes without change the interim final rule, Processes and Procedures for Issuance and Use of Guidance Documents (OAG 174; RIN 1105–AB61), published at 86 FR 37674 (July 16, 2021) (the ''July 16 interim rule''). The interim rule implemented Executive Order 13992 of January 25, 2021, 86 FR 7049 (Revocation of Certain Executive Orders Concerning Federal Regulation), by removing the Department's regulations at 28 CFR 50.26 and 50.27 and reserving those sections. The Department's approach to the development, issuance, and use of guidance documents is now governed by the Attorney General Memorandum issued on July 1, 2021, ''Issuance and Use of Guidance Documents by the Department of Justice,'' *https://www.justice.gov/opa/page/file/1408606/download.*

B. Executive Order 13992

As discussed in greater detail in the July 16 interim rule, on January 20, 2021, President Biden issued Executive Order 13992, which, among other things, revoked Executive Order 13891 and stated that ''agencies must be equipped with the flexibility to use robust regulatory action to address national priorities.'' 86 FR at 7049. Executive Order 13992 directed the heads of all agencies to ''promptly take steps to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, implementing or enforcing'' the revoked Executive Order. *Id.*

C. Revocation of 28 CFR 50.26 and 50.27

Based on its evaluation of the prior regulations at 28 CFR 50.26 and 50.27, the Department concluded that those regulations were unnecessary and unduly burdensome, lacked flexibility and nuance, and limited the ability of the Department to do its work effectively. Among other things, the regulations generated collateral disputes in affirmative and enforcement litigation, and they discouraged Department components from preparing and issuing guidance that would be helpful to members of the public. In addition, because the regulations imposed requirements on a particular category of agency documents deemed to be ''guidance,'' the regulations inherently caused Department staff to expend significant resources determining whether each agency document, product or communication constituted ''guidance'' and was therefore subject to these regulations. Accordingly, the Department determined that the rules should be removed.

In removing the rules, the Department did not depart from the principle that guidance documents are interpretative and thus cannot impose legal requirements beyond those found in relevant constitutional provisions, statutes, and existing regulations. The Department also continues to believe that guidance documents should be clear, transparent, and readily accessible to the public. But these principles, and other related Department policies and practices concerning guidance documents, have traditionally been addressed through memoranda from Department leadership rather than through regulations. The Department therefore removed 28 CFR 50.26 and 50.27 in their entirety, and solicited public comment. On July 1, 2021, the Attorney General issued a new Memorandum setting forth the Department's policies going forward from that date regarding the development, issuance, and use of guidance documents, and the Department has updated other applicable internal protocols in accordance with these policies.

D. Public Comments on the July 16, 2021, Interim Rule Pertaining to 28 CFR 50.26 and 50.27

During the public comment period, which closed on August 16, 2021, the Department received only two comments, both of which supported the interim rule. The reasons given by the commenters in support of the removal of 28 CFR 50.26 and 50.27 largely paralleled the Department's own reasons and justifications. Accordingly, the July 16 interim final rule is being finalized without change.

II. Conforming Changes to the Justice Manual

The provisions of the Justice Manual at section 1–19.000 (*https://www.justice.gov/jm/justice-manual*) have been revised, and the provisions of the Justice Manual previously published at section 1–20.000 have been removed, to conform with the principles set forth in the July 1, 2021, Attorney General Memorandum.

III. Regulatory Certifications

A. Administrative Procedure Act

This final rule relates to a matter of agency management or personnel and is a rule of agency organization, procedure, or practice. As such, this rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. *See* 5 U.S.C. 553(a)(2), (b)(A), (d). The rule is effective upon being posted for public inspection at the **Federal Register**. The Department, in its discretion, had sought post-promulgation public comment on the July 16 interim rule. As previously explained, the Department received only two comments, both of which supported the rule.

B. Regulatory Flexibility Act

A Regulatory Flexibility Analysis was not required for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter. *See* 5 U.S.C. 601(2), 604(a).

C. Executive Orders 12866, 13563, and 14094—Regulatory Review

This final rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation; in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation; and in accordance with Executive Order 14094, ''Modernizing Regulatory Review''.

This final rule is ''limited to agency organization, management, or personnel matters'' and thus is not a ''rule'' for purposes of review by the Office of Management and Budget (OMB), a determination in which OMB has concurred. *See* Executive Order 12866, sec. 3(d)(3). Accordingly, this rule has not been reviewed by OMB. The Department claimed a similar exemption at the time of promulgating the July 16 interim rule.

D. Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform.''

E. Executive Order 13132—Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with Executive Order 13132, ''Federalism,'' the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

G. Congressional Review Act

This rule is not a major rule as defined by section 804 of the Congressional Review Act (CRA), 5 U.S.C. 804. This action pertains to agency management or personnel, and agency organization, procedure, or practice, and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a ''rule'' as that term is used in the CRA, 5 U.S.C. 804(3), and the reporting requirement of 5 U.S.C. 801 does not apply.

H. Paperwork Reduction Act of 1995

This final rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

List of Subjects in 28 CFR Part 50

Administrative practice and procedure.

■ Accordingly, the interim rule amending 28 CFR part 50, which was published at 86 FR 37674 on July 16, 2021, is adopted as final without change.

Dated: January 14, 2025.

Merrick B. Garland,

Attorney General.

[FR Doc. 2025–01409 Filed 1–17–25; 8:45 am]

BILLING CODE 4410–BB–P

DEPARTMENT OF EDUCATION

34 CFR Parts 36 and 668

RIN 1801–AA25

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Department of Education (Department) issues these final regulations to adjust the Department's civil monetary penalties (CMPs) for inflation. This adjustment is required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act). These final regulations provide the 2025 annual inflation adjustments being made to the penalty amounts in the Department's final regulations published in the **Federal Register** on January 25, 2024 (2024 final rule).

DATES: These regulations are effective January 21, 2025. The adjusted CMPs established by these regulations are applicable only to civil penalties assessed after January 21, 2025, whose associated violations occurred after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Rhondalyn Primes, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue SW, Room 6C150, Washington, DC 20202–2241. Telephone: (202) 453–6444. Email: *rhondalyn.primes@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Background

A CMP is defined in the Inflation Adjustment Act (28 U.S.C. 2461 note) as any penalty, fine, or other sanction that is (1) for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

The Inflation Adjustment Act provides for the regular evaluation of CMPs to ensure that they continue to maintain their deterrent value. The Inflation Adjustment Act required that each agency issue regulations to adjust its CMPs beginning in 1996 and at least every four years thereafter. The Department published its most recent cost adjustment to its CMPs in the **Federal Register** on January 25, 2024 (89 FR 4829) (2024 final rule), and those adjustments became effective on the date of publication.

The 2015 Act (section 701 of Pub. L. 114–74) amended the Inflation Adjustment Act to improve the effectiveness of CMPs and to maintain their deterrent effect.

The 2015 Act requires agencies to: (1) adjust the level of CMPs with an initial ''catch-up'' adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments for inflation. Catch-up adjustments are based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year the penalty was last adjusted by a statute other than the Inflation Adjustment Act, and the October 2015 CPI–U. Annual inflation adjustments are based on the percentage change between the October CPI–U preceding the date of each statutory adjustment, and the prior year's October CPI–U.[1] The Department published an IFR with the initial ''catch-up'' penalty adjustment amounts on August 1, 2016 (81 FR 50321).

In these final regulations, based on the CPI–U for the month of October 2024, not seasonally adjusted, we are annually adjusting each CMP amount by a multiplier for 2025 of 1.02598, as directed by the Office of Management and Budget (OMB) Memorandum No. M–25–02 issued on December 17, 2024.

The Department's Civil Monetary Penalties

The following analysis calculates new CMPs for penalty statutes in the order in which they appear in 34 CFR 36.2. The penalty amounts are being adjusted up based on the multiplier of 1.02598 provided in OMB Memorandum No. M–25–02.

Statute: 20 U.S.C. 1015(c)(5).

Current Regulations: The CMP for 20 U.S.C. 1015(c)(5) (section 131(c)(5) of the Higher Education Act of 1965, as amended (HEA)), as last set out in statute in 1998 (Pub. L. 105–244, title I, section 101(a), October 7, 1998, 112 Stat. 1602), is a fine of up to $25,000 for failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics. In the 2024 final rule, we increased this amount to $46,901.

New Regulations: The new penalty for this section is $48,119.

Reason: Using the multiplier of 1.02598 from OMB Memorandum No. M–25–02, the new penalty is calculated as follows: $46,901 × 1.02598 = $48,119.49, which makes the adjusted penalty $48,119, when rounded to the nearest dollar.

[1] If a statute that created a penalty is amended to change the penalty amount, the Department does not adjust the penalty in the year following the adjustment.

Statute: 20 U.S.C. 1022d(a)(3).

Current Regulations: The CMP for 20 U.S.C. 1022d(a)(3) (section 205(a)(3) of the HEA), as last set out in statute in 2008 (Pub. L. 110–315, title II, section 201(2), August 14, 2008, 122 Stat. 3147), is a fine of up to $27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs. In the 2024 final rule, we increased this amount to $39,065.

New Regulations: The new penalty for this section is $40,080.

Reason: Using the multiplier of 1.02598 from OMB Memorandum No. M–25–02, the new penalty is calculated as follows: $39,065 × 1.02598 = $40,079.90, which makes the adjusted penalty $40,080, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1082(g).

Current Regulations: The CMP for 20 U.S.C. 1082(g) (section 432(g) of the HEA), as last set out in statute in 1986 (Pub. L. 99–498, title IV, section 402(a), October 17, 1986, 100 Stat. 1401), is a fine of up to $25,000 for violations by lenders and guaranty agencies of Title IV of the HEA, which authorizes the Federal Family Education Loan Program. In the 2024 final rule, we increased this amount to $69,733.

New Regulations: The new penalty for this section is $71,545.

Reason: Using the multiplier of 1.02598 from OMB Memorandum No. M–25–02, the new penalty is calculated as follows: $69,733 × 1.02598 = $71,544.66, which makes the adjusted penalty $71,545, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1094(c)(3)(B).

Current Regulations: The CMP for 20 U.S.C. 1094(c)(3)(B) (section 487(c)(3)(B) of the HEA), as set out in statute in 1986 (Pub. L. 99–498, title IV, section 407(a), October 17, 1986, 100 Stat. 1488), is a fine of up to $25,000 for an IHE's violation of title IV of the HEA or its implementing regulations. Title IV authorizes various programs of student financial assistance. In the 2024 final rule, we increased this amount to $69,733.

New Regulations: The new penalty for this section is $71,545.

Reason: Using the multiplier of 1.02598 from OMB Memorandum No. M–25–02, the new penalty is calculated as follows: $69,733 × 1.02598 = $71,544.66, which makes the adjusted penalty $71,545, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1228c(c)(2)(E).

Current Regulations: The CMP for 20 U.S.C. 1228c(c)(2)(E) (section 429 of the General Education Provisions Act), as set out in statute in 1994 (Pub. L. 103–382, title II, section 238, October 20, 1994, 108 Stat. 3918), is a fine of up to $1,000 for an educational organization's failure to disclose certain information to minor students and their parents. In the 2024 final rule, we increased this amount to $2,058.

New Regulations: The new penalty for this section is $2,111.

Reason: Using the multiplier of 1.02598 from OMB Memorandum No. M–25–02, the new penalty is calculated as follows: $2,058 × 1.02598 = $2,111.46, which makes the adjusted penalty $2,111, when rounded to the nearest dollar.

Statute: 31 U.S.C. 1352(c)(1) and (c)(2)(A).

Current Regulations: The CMPs for 31 U.S.C. 1352(c)(1) and (c)(2)(A), as set out in statute in 1989 (Pub. L. 101–121, title III, section 319(a)(1), October 23, 1989, 103 Stat. 750), are a fine of $10,000 to $100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the executive branch with respect to the award of Government grants and contracts. In the 2024 final rule, we increased these amounts to $24,496 to $244,958.

New Regulations: The new penalties for these sections are $25,132 to $251,322.

Reason: Using the multiplier of 1.02598 from OMB Memorandum No. M–25–02, the new minimum penalty is calculated as follows: $24,496 × 1.02598 = $25,132.40, which makes the adjusted penalty $25,132, when rounded to the nearest dollar. The new maximum penalty is calculated as follows: $244,958 × 1.02598 = $251,322.00, which makes the adjusted penalty $251,322, when rounded to the nearest dollar.

Statute: 31 U.S.C. 3802(a)(1) and (a)(2).

Current Regulations: The CMPs for 31 U.S.C. 3802(a)(1) and (a)(2), as set out in statute in 1986 (Pub. L. 99–509, title VI, section 6103(a), Oct. 21, 1986, 100 Stat. 1937), are a fine of up to $5,000 for false claims and statements made to the Government. In the 2024 final rule, we increased this amount to $13,946.

New Regulations: The new penalty for this section is $14,308.

Reason: Using the multiplier of 1.02598 from OMB Memorandum No. M–25–02, the new penalty is calculated as follows: $13,946 × 1.02598 = $14,308.32, which makes the adjusted penalty $14,308 when rounded to the nearest dollar.

Executive Orders 12866, 13563 and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $200 million or more, (adjusted every 3 years by the Administrator of OMB's Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

We have determined that these final regulations: (1) exclusively implement the annual adjustment; (2) are consistent with OMB Memorandum No. M–25–02; and (3) have an annual impact of less than $200 million. Therefore, based on OMB Memorandum No. M–25–02, this is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866 (as amended by Executive Order 14094).

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866 (as amended by Executive Order 14094). To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' OIRA has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final regulations as required by statute and in accordance with OMB Memorandum No. M–25–02. The Secretary has no discretion to consider alternative approaches as delineated in the Executive order. Based on this analysis and the reasons stated in the preamble, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, section 4(b)(2) of the 2015 Act (28 U.S.C. 2461 note) provides that the Secretary can adjust these 2025 penalty amounts notwithstanding the requirements of 5 U.S.C. 553. Therefore, the requirements of 5 U.S.C. 553 for notice and comment and delaying the effective date of a final rule do not apply here.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 601(2), the Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking. The Regulatory Flexibility Act does not apply to this rulemaking because section 4(b)(2) of the 2015 Act (28 U.S.C. 2461 note) provides that the Secretary can adjust these 2025 penalty amounts without publishing a general notice of proposed rulemaking.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

Based on our own review, we have determined that these regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects

34 CFR Part 36

Claims, Fraud, Penalties.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Miguel Cardona,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 36 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 36—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474; 28 U.S.C. 2461 note, as amended by § 701 of Pub. Law 114–74, unless otherwise noted.

■ 2. Section 36.2 is amended by revising table 1 to read as follows:

§ 36.2 Penalty adjustment.

* * * * *

TABLE 1 TO § 36.2—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

Statute	Description	New maximum (and minimum, if applicable) penalty amount
20 U.S.C. 1015(c)(5) (section 131(c)(5) of the Higher Education Act of 1965 (HEA)).	Provides for a fine, as set by Congress in 1998, of up to $25,000 for failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics.	$48,119.
20 U.S.C. 1022d(a)(3) (section 205(a)(3) of the HEA).	Provides for a fine, as set by Congress in 2008, of up to $27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs.	$40,080.

TABLE 1 TO § 36.2—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

Statute	Description	New maximum (and minimum, if applicable) penalty amount
20 U.S.C. 1082(g) (section 432(g) of the HEA) ...	Provides for a civil penalty, as set by Congress in 1986, of up to $25,000 for violations by lenders and guaranty agencies of title IV of the HEA, which authorizes the Federal Family Education Loan Program.	$71,545.
20 U.S.C. 1094(c)(3)(B) (section 487(c)(3)(B) of the HEA).	Provides for a civil penalty, as set by Congress in 1986, of up to $25,000 for an IHE's violation of title IV of the HEA, which authorizes various programs of student financial assistance.	$71,545.
20 U.S.C. 1228c(c)(2)(E) (section 429 of the General Education Provisions Act).	Provides for a civil penalty, as set by Congress in 1994, of up to $1,000 for an educational organization's failure to disclose certain information to minor students and their parents.	$2,111.
31 U.S.C. 1352(c)(1) and (c)(2)(A)	Provides for a civil penalty, as set by Congress in 1989, of $10,000 to $100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the executive branch with respect to the award of Government grants and contracts.	$25,132 to $251,322.
31 U.S.C. 3802(a)(1) and (a)(2)	Provides for a civil penalty, as set by Congress in 1986, of up to $5,000 for false claims and statements made to the Government.	$14,308.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 3. The authority citation for part 668 continues to read in part as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221e–3, and 1231a, unless otherwise noted.

* * * * *

§ 668.84 [Amended]

■ 4. Section 668.84 is amended by:

■ a. In paragraph (a)(1) introductory text, removing the number ''$69,733'' and adding, in its place, the number ''$71,545''.

■ b. Removing the parenthetical authority citation at the end of the section.

[FR Doc. 2025–01419 Filed 1–16–25; 4:15 pm]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0627; FRL–12536–02–R9]

Interim Final Determination To Defer Sanctions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the California Air Resources Board (CARB) has submitted a Clean Air Act (CAA or ''Act'') state implementation plan (SIP) revision on behalf of the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or ''District'') that corrects deficiencies concerning the District's new source review (NSR) stationary source permitting program. This determination is based on a proposed approval, published elsewhere in this issue of the **Federal Register**, of SJVUAPCD Rules 1020, 2020, and 2201. The effect of this interim final determination is to defer sanctions that were triggered by the EPA's limited disapproval of SJVUAPCD Rule 2201 in 2023.

DATES: This interim final determination is effective January 21, 2025. However, comments will be accepted on or before February 20, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0620 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Doris Lo, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; phone: (415) 972–3959; email: *lo.doris@epa.gov.*

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

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I. Background

On July 10, 2023, we published a limited approval and limited disapproval of SJVUAPCD Rule 2201 as adopted locally on August 15, 2019.[1] We based our limited disapproval action on deficiencies identified in the submitted rule. This limited approval and limited disapproval action started a sanctions clock for imposition of offset sanctions 18 months after August 9,

[1] 87 FR 45730 (July 29, 2022).

2023, and highway sanctions six months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31. Under 40 CFR 52.31(d)(1), offset sanctions apply 18 months after the effective date of a disapproval and highway sanctions apply six months after the offset sanctions, unless we determine that the deficiencies forming the basis of the disapproval have been corrected.

On April 20, 2023, SJVUAPCD amended Rules 1020 and 2201 to address the deficiencies that were the basis for our limited disapproval of Rule 2201, as identified in our July 29, 2022, proposal. The State submitted these amended rules to the EPA on October 13, 2023, along with other revisions to Rule 2020 adopted on December 18, 2014. In the Proposed Rules section of this **Federal Register**, we are proposing a limited approval of these rules because we believe they correct the deficiencies identified in our July 10, 2023 disapproval action and meet other applicable CAA requirements. This approval is limited because the EPA is simultaneously proposing a limited disapproval of the rules based on other revisions that do not meet applicable CAA requirements. Based on this proposed action, we are taking this final rulemaking action, effective on publication, to defer the imposition of the offset and highway sanctions that were triggered by our July 10, 2023 limited disapproval.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this final determination and our proposed limited approval of SJVUAPCD Rules 1020, 2020, and 2201, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 52.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks associated with our July 10, 2023 final action will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to defer the imposition of the offset and highway sanctions associated with our limited disapproval of SJVUAPCD Rule 2201 (as adopted in 2023) based on our concurrent proposal finding that the State's SIP revision corrects the deficiencies that initiated the sanctions.

Because the EPA has preliminarily determined that the State has corrected the deficiencies identified in the EPA's July 10, 2023 limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[2] However, by this action, the EPA is providing the public with an opportunity to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that were the basis for the limited disapproval that started the sanctions clocks. Therefore, it is not in the public interest to apply sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction.[3]

III. Statutory and Executive Order Reviews

This action defers Federal sanctions and imposes no additional requirements. 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 proposes to approve 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.

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

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 communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements Executive Order 12898 and defines EJ as, among other things, ''the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment.''

The State did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Orders 12898 and 14096 of achieving EJ for communities with EJ concerns.

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

[2] 5 U.S.C. 553(b)(B).

[3] 5 U.S.C. 553(d)(1).

General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this action as discussed in Section II of this preamble, including the basis for that finding.

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 March 24, 2025. 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 it shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: January 13, 2025.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2025–01215 Filed 1–17–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0055; FRL–11687–02–R5]

Air Plan Approval; Ohio; Withdrawal of Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to correct a November 19, 2020, rulemaking removing the Air Nuisance Rule (ANR) from the Ohio State Implementation Plan (SIP). This action is in response to a February 10, 2023, decision by the United States Court of Appeals for the Sixth Circuit (Sixth Circuit or Court) to remand without vacatur EPA's removal of the ANR from the Ohio SIP. Because the Court did not vacate EPA's removal of the ANR, the ANR is currently not in Ohio's SIP. After reevaluating EPA's November 19, 2020, rulemaking, upon remand, EPA proposed to determine that its November 2020 final action was in error, and to correct that action by reinstating the ANR as part of the Ohio SIP. EPA proposed to take this action on February 22, 2024 and received both supportive and adverse comments. EPA is finalizing this action as proposed, and upon the effective date of this action, the ANR will be reinstated into the Ohio SIP.

DATES: This final rule is effective on February 20, 2025.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2020–0055. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *https://www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Christos Panos, at (312) 353–8328 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Air and Radiation Division (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328, *panos.christos@epa.gov.*

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

I. Background

A detailed history of this matter is provided in EPA's February 22, 2024, 89 FR 13304, notice of proposed rulemaking (February 2024 Proposed Rule). It includes a discussion of EPA's previous rulemaking action to remove the ANR, OAC 3745–15–07, from the Ohio SIP, which EPA proposed on March 23, 2020, 85 FR 16309 (March 2020 Proposed Rule) and finalized on November 19, 2020, 85 FR 73636 (November 2020 Final Rule). That action relied on EPA's error-correction authority under Clean Air Act (CAA or Act) section 110(k)(6). In that action, EPA concluded that we had erred by approving the ANR into Ohio's SIP because we determined that the ANR was not relied upon by Ohio to demonstrate the implementation, maintenance, attainment, or enforcement of any National Ambient Air Quality Standard (NAAQS).

During the public comment period for the March 2020 Proposed Rule to remove the ANR from the Ohio SIP, EPA received comments from the Sierra Club and other environmental groups,[1] referred to in this action collectively as ''Environmental Commenters,'' asserting that EPA's approval of the ANR as part of the SIP was not an error and that EPA's use of its error correction authority to remove the ANR from Ohio's SIP was unlawful. These comments stated that the ANR was an ''important regulatory tool in achieving and maintaining the NAAQS,'' and that its removal from the SIP ''ignored the role of citizen suits in CAA enforcement.'' Further, these comments identified procedural concerns with EPA's error correction, and stated that EPA was required to adhere to the SIP revision process to remove the ANR from Ohio's SIP, which would include addressing the requirements of section 193 of the CAA to demonstrate that no backsliding would result from this change. Additionally, these comments addressed the use of the ANR in enforcement actions.[2] These comments asserted that EPA had failed to consider the impact of eliminating the only available pathway for Ohio residents to enforce the ANR. Therefore, the commenters maintained, removing the ANR from the SIP prevents local governments and non-governmental organizations, as well as affected Ohio communities, from directly enforcing

[1] EPA received comments opposing the removal of the ANR from the Sierra Club, the Ohio Environmental Council, Ohio Citizen Action, Altman Newman Co. LPA, the National Resources Defense Council, and more than 1800 individual commenters who submitted their comments as part of a letter-writing campaign. *See* Docket ID No. EPA–R05–OAR–2020–0055. All documents in the docket are listed on the *www.regulations.gov* website.

[2] *See* ''Sierra Club, Ohio Environmental Council, Ohio Citizen Action, Altman Newman Co. LPA, and Natural Resources Defense Council Comments Regarding EPA Proposed Removal of the Air Pollution Nuisance Rule from the Ohio State Implementation Plan (SIP),'' Docket ID No. EPA–R05–OAR–2020–0055. All documents in the docket are listed on the *www.regulations.gov* website.

the ANR where necessary to protect Ohioans' health, welfare and property. The commenters further contended that individual Ohioans (as well as local governments) had relied, and were relying at the time of the March 2020 Proposed Rule, on the nuisance provision for Federal enforcement of citizen suits under section 304 of the CAA to address highly localized emissions.

Notwithstanding the Environmental Commenters' concerns as articulated in their comments on the March 2020 Proposed Rule, EPA finalized the removal of the ANR from the Ohio SIP in November 2020. The Environmental Commenters then raised many of these same concerns in the United States Court of Appeals for the Sixth Circuit in petitioning for review of EPA's ANR removal action, alongside other environmental groups and private citizens. *See Sierra Club* v. *EPA,* 60 F.4th 1008 (6th Cir. 2023).

During that litigation in the Sixth Circuit, the State of Ohio submitted a letter to the Court [3] acknowledging that it had relied on the ANR as recently as July 2021, when it brought a lawsuit against an iron and steel manufacturing facility that cited exceedances of the NAAQS as evidence of nuisance under the ANR. See *State of Ohio* v. *Republic Steel,* Case No. 2021VC000949 (Sark County, Ohio July 2, 2021).

Ultimately, the Sixth Circuit granted EPA's request for a voluntary remand of EPA's removal of the ANR back to the Agency for further review. In so doing, the Sixth Circuit cited several cases in which parties could and did bring enforcement actions for violations of the ANR (prior to EPA removing the rule from the Ohio SIP). *See Sierra Club,* 60 F.4th at 1014 (citing *Fisher* v. *Perma-Fix of Dayton, Inc.* No., 3:04–C–V–418, 2006 WL 212076 (S.D. Ohio. Jan. 27, 2006); *Sampson* v. *SunCoke Energy,* No. 1:17–cv–00658 (S.D. Ohio)). The Court also noted Petitioners' past reliance on the ANR apart from actually bringing CAA litigation (*i.e.,* filing notices of intent to sue under the CAA). *Id.* While the Court acknowledged EPA's statement in its proposal that it had found ''no information'' indicating the State had relied or intended to rely on the ANR for attainment or maintenance of the NAAQS, the Court noted that there was nothing in EPA's proposal or EPA's January 2020 email exchange with the Ohio EPA official that discussed whether the ANR had a role in NAAQS *enforcement. Sierra Club,* 60 F.4th at 1015 (emphasis in original).

After a careful reevaluation of the November 2020 Final Rule in accordance with the Sixth Circuit's decision, EPA proposed in February 2024 that EPA's November 2020 action removing the ANR from the Ohio SIP was deficient and in error. Consequently, in February 2024, EPA also proposed to reverse its removal and reinstate the ANR into the Ohio SIP. EPA received both adverse and supportive comments on this proposed action. The adverse comments are addressed in Section II. of this preamble.

EPA received comments in support of the proposed rule from more than 600 individual commenters who submitted their comments as part of a letter-writing campaign. The supportive commenters also included Sierra Club, the Ohio Environmental Council, AltmanNewman Co. LPA, the FreshWater Accountability Project, the Case Western Reserve University School of Law Environmental Law Clinic, Communities United for Action, Mom's Clean Air Force (Ohio), and the Athens County Future Action Network. Several of these commenters had previously expressed disagreement with EPA's March 2020 Proposed Rule to remove the ANR from the SIP. Many of these supportive comments reinforced several comments on the March 2020 Proposed Rule, stating that the ANR's inclusion in the SIP is appropriate under the CAA as it provides for the implementation, maintenance, and enforcement of the NAAQS. The supportive commenters agreed with EPA's current position, and referenced the Sixth Circuit's acknowledgement, that the ANR has been used to limit emissions of criteria pollutants under the CAA, and that the CAA gives states wide discretion to design appropriate regulations to attain and maintain the NAAQS. The supportive commenters also reiterated that the ANR has been used in multiple CAA enforcement actions, and agreed with EPA that citizen suits under the CAA serve as a crucial implementation and enforcement mechanism. The supportive commenters also agreed with EPA's acknowledgement that, under CAA section 193, EPA was required to perform an anti-backsliding analysis before removing the ANR from the SIP in the November 2020 Final Rule, because the ANR is considered a control requirement, and EPA could not have properly used its error correction authority under CAA section 110(k)(6) to remove the ANR unless the removal would ensure equivalent or greater emission reductions under CAA section 193.

II. Response to Comments

All of the comments received on the February 2024 Proposed Rule are included in the docket for this action. Relevant supportive comments were summarized in Section I. of this preamble. EPA received adverse comments from a group of Ohio trade associations, the Ohio Attorney General, and the Ohio Environmental Protection Agency (Ohio EPA). The relevant comment summaries are summarized and addressed below.

Comment: The commenter contends that EPA may not withdraw its 2020 final rule and reinstate the ANR in the Ohio SIP through its error correction authority under CAA section 110(k)(6). The commenter states that the 2020 Final Rule was not an action ''approving, disapproving, or promulgating any plan or plan revision'' as required by CAA section 110(k)(6). In addition, the commenter alleges that the 2020 Final Rule was not a ''plan revision''; it was a revision to EPA's final action approving the ANR's inclusion in the Ohio SIP in 1974. The commenter states that EPA is not proposing to correct an error it made when it originally approved Ohio's SIP, or any part of the SIP; it is proposing to reverse a prior correction made in 2020. The commenter claims that EPA's error correction authority would not apply to EPA's 2020 correction, only to errors that existed in the SIP at the time the SIP was originally approved.

Response: As discussed in EPA's February 2024 Proposed Rule, the language in CAA section 110(k)(6) provides EPA authority to issue an error correction action whenever EPA ''determines that [its] action approving, disapproving, or promulgating any plan or plan revision (or part thereof) . . . was in error.'' Once EPA has made a determination that it erred, it ''may in the same manner as the approval, disapproval, or promulgation, revise such action as appropriate without requiring any further submission from the State.'' *Ala. Envtl. Council* v. *EPA,* 711 F.3d 1277 (11th Cir. 2013). As recognized by courts, EPA has broad authority to issue error corrections under CAA section 110(k)(6), which has been interpreted as a ''broad provision [that] was enacted to provide the EPA with an avenue to correct its own erroneous actions and grant the EPA the discretion to decide when to act pursuant to the provision.'' *Assoc. of Irritated Residents* v. *EPA,* 79 F.3d 934, 948 (9th Cir. 2015).

[3] *See* ''Notice of additional information in *Sierra Club, et al.* v. *United States Environmental Protection Agency,* No. 21–3057,'' *Sierra Club* v. *EPA,* No. 21–3057 (6th Cir. Oct. 18, 2022).

As explained in our February 2024 Proposed Rule, EPA's decision to correct its November 2020 Final Rule is based on a determination that our original action to remove the ANR from Ohio's SIP was in error, because that prior determination was deficient for two reasons: (1) because EPA failed to adequately consider the ANR's use in enforcement of the NAAQS, and (2) because EPA failed to conduct an anti-backsliding analysis pursuant to section 193 of the CAA.

With respect to the commenter's assertion that EPA's November 2020 Final Rule was not ''approving, disapproving, or promulgating any plan or plan revision,'' and that therefore EPA cannot correct the November 2020 Final Rule under section 110(k)(6), we disagree. In the November 2020 Final Rule, EPA clearly stated that ''[u]pon the effective date of this action, the nuisance rule will no longer be part of the Ohio SIP.'' [4] In other words, by that action, EPA revised the Ohio SIP to no longer include the ANR. This clearly qualifies as EPA ''promulgating any . . . plan revision,'' and therefore falls within the authority of EPA to correct under CAA section 110(k)(6). EPA further disagrees with the commenter's contention that CAA section 110(k)(6) can be used only to correct errors that existed in the SIP at the time the SIP was originally approved. This limitation on the scope of CAA section 110(k)(6) authority is not present in the text of the CAA and is not clearly inferable from it. The text authorizes EPA to make corrections to actions that EPA has taken in the past, and the commenter has not provided any statutory basis to support the claim that section 110(k)(6) may only be used to correct original SIP approvals. The only support that the commenter cites is an out of context statement from a dissenting opinion in a D.C. Circuit decision that, even if controlling, would not undermine EPA's action here.[5]

Comment: The commenter contends that EPA may not reverse its 2020 final rule and reinstate the ANR in the Ohio SIP through its inherent authority. The commenter alleges that this is because inherent reconsideration does not apply where Congress has spoken, and the CAA carefully prescribes how SIPs may be amended. Congress authorized reconsideration of SIP-related final actions in sections 307(d)(7) and 110(k)(6) of the CAA and the agency cannot rely on its inherent authority to circumvent those express requirements. The commenter further states that even if EPA had reconsideration authority, the exercise of that authority is barred as untimely because an agency's inherent authority to reconsider a prior decision is proper only when ''such reconsideration occurs within a reasonable time after the first decision'' [citations omitted]. Here, EPA's reconsideration comes nearly four years after its original decision, which the commenter claims is not within a reasonable amount of time.

Response: As explained in our February 2024 Proposed Rule, an agency's authority to reconsider past decisions derives from its statutory authority to make those decisions in the first instance. *See Trujillo* v. *General Electric Co.,* 621 F.2d 1084, 1086 (10th Cir. 1980) (''Administrative agencies have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider.'') (*citing Albertson* v. *FCC,* 182 F.2d 397, 399 (D.C. Cir. 1950)). *See* 621 F.2d at 1088 (''The authority to reconsider may result in some instances, as it did here, in a totally new and different determination.''). In other words, EPA's authority to reconsider its November 2020 Final Rule derives from our statutory authority under CAA section 110(k)(6) that we relied on to take that action in the first instance. Thus, with respect to the commenter's assertion that the agency cannot ''circumvent'' the express requirements of sections 307(d)(7) or 110(k)(6) and rely instead on its inherent reconsideration authority, the commenter misunderstands the basis for this action as articulated in our proposed rule. In this final action, EPA is relying both on its authority under CAA section 110(k)(6) as well as its inherent reconsideration authority to determine that our November 2020 Final Rule was in error. EPA notes that section 307(d)(7) is not applicable to the current action.

Further, EPA has inherent authority to reconsider, repeal, or revise past decisions to the extent permitted by law so long as the Agency provides a reasoned explanation. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009) (an agency may revise its policy, but must demonstrate that the new policy is permissible under the statute and is supported by good reasons, taking into account the record of the previous rule).

With respect to the commenter's assertion that EPA's reconsideration is barred because it did not occur within a ''reasonable'' amount of time, EPA notes that the commenter cites to a Sixth Circuit case stating that ''[w]hat is a short and reasonable time period will vary with each case, but absent unusual circumstances, the time period would be measured in weeks, not years.'' *Belville Min. Co.* v. *United States,* 999 F.2d 989, 1000 (6th Cir. 1993). However, EPA further notes that its reconsideration process did not actually begin until the Sixth Circuit issued its February 10, 2023, decision granting EPA's request for voluntary remand of the November 2020 action. To summarize the timeline, EPA's November 2020 Final Rule removing the ANR was challenged almost immediately, both through a Petition for Reconsideration submitted on January 18, 2021, and then a Petition for Review in the Sixth Circuit filed on January 19, 2021. The Sixth Circuit litigation continued until February 10, 2023, when the Court granted EPA's request for voluntary remand. The Agency represented to the Court, and the Court acknowledged in its opinion, that the Agency would ''complete its reevaluation of the ANR within twelve months of remand,'' *Sierra Club,* 60 F.4th at 1020. EPA accordingly reconsidered its November 2020 Final Rule for approximately twelve months, culminating in the February 2024 Proposed Rule at issue here. EPA's action here is therefore timely given the litigation and the Court's express acknowledgement of a twelve-month period to reconsider the ANR's removal. The commenter is incorrect to assert that the reconsideration process occurred over four years, where the majority of that time was spent litigating the original November 2020 Final Rule.

Comment: The commenter contends reinstating the ANR in the Ohio SIP would be arbitrary and capricious, and thus unlawful pursuant to the Administrative Procedure Act and section 307(d) of the CAA (if deemed applicable). The commenter states that in at least 16 separate actions in 14 different states, EPA has removed air and odor nuisance rules from SIPs or declined to include them in SIPs when requested by states, citing an insufficient connection to attainment and maintenance of the NAAQS. Further, the commenter notes that EPA has removed several nuisance rules from SIPs, in some cases using the same provision, CAA section 110(k)(6), that

[4] 85 FR 73636 (November 19, 2020).

[5] The commenter cites to *Texas* v. *EPA,* 726 F.3d 180, 204 (D.C. Cir. 2013) (Kavanaugh, J., dissenting) for the proposition that EPA can use its error correction authority under section 110(k)(6) only if the error existed at the time the SIP was originally approved. The action in that case corrected a prior approval, so in context, this statement was intended to articulate a perceived temporal limitation on EPA's authority to correct errors, (*i.e.,* that the error had to exist at the time of the prior action), not the types of actions that can be corrected—which are clearly delineated in the statutory text.

was used in the removal of the nuisance rule from the Ohio SIP. The ANR prohibits emissions ''of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property.'' The commenter alleges that the generic categories of substances regulated by the ANR are unrelated to the NAAQS regulated pollutants, and the amounts prohibited bear no relation to compliance with the NAAQS standards. The commenter claims that reinstating the ANR into Ohio's SIP would contradict EPA's decades-long practice and policy toward other states, and that by proposing to reinstate the nuisance rule into the Ohio SIP, EPA is treating Ohio inconsistently with other states that no longer have a nuisance rule in the SIP. Further, the commenter notes that this can have a direct effect on facilities deciding in which location to expand or build, and claims that the ANR is not required to be part of the SIP as demonstrated by EPA's removal of nuisance provisions in other SIPs.

Response: EPA acknowledges that it has declined to approve certain nuisance rules into state SIPs, approved certain state requests to remove nuisance provisions from the respective SIPs, and removed certain nuisance rules from SIPs using our error correction authority under CAA section 110(k)(6). However, EPA maintains that each of the actions the commenter cites requires a distinct analysis based on the nature of the nuisance rule at issue, as well as the facts surrounding the particular rule in the particular state. As the Supreme Court has plainly stated, ''[e]ach State is given wide discretion in formulating its [SIP], and the Act provides that the [EPA] 'shall approve' the proposed plan if it has been adopted after public notice and hearing and if it meets eight specified criteria'' in CAA section 110(a)(2). *Union Elec. Co.* v. *EPA,* 427 U.S. 246, 250 (1976). The criteria in section 110(a)(2) are broad, such as requiring the plan to ''include enforceable emission limitations and other control measures, means, or techniques as may be necessary or appropriate to meet the applicable requirements of this chapter,'' and these criteria implement the overarching requirement in CAA section 110(a)(1) that states must have a SIP that ''provides for implementation, maintenance, and enforcement of the NAAQS.''

Importantly, Congress ''left to the States considerable latitude in determining specifically how the [NAAQS] would be met. This discretion includes the continuing authority to revise choices about the mix of emission limitations.'' *Train* v. *Nat. Res. Def. Council, Inc.,* 421 U.S. 60, 87 (1975). This discretion also encompasses the flexibility that ''[s]tates may submit [SIPs] more stringent than federal law requires'' and the Supreme Court has instructed that EPA ''must approve such plans if they meet the minimum requirements of § 110(a)(2).'' *Union Elec.,* 427 U.S. at 265.

EPA therefore is responsible for evaluating state SIPs and approving those SIPs that meet the requirements of the CAA. With respect to evaluating a state's SIP submission requesting to remove a nuisance provision from the state's SIP, or EPA's use of its error correction authority to remove a nuisance provision from a SIP, this would include an evaluation of the specific nuisance provision's connection to the ''implementation, maintenance, and enforcement'' of the NAAQS. In some cases, such an evaluation could lead to the conclusion that the nuisance provision does not have a connection to the NAAQS, and a conclusion that therefore the state's request to remove the relevant provision from the SIP, or that EPA's prior approval of the provision into the SIP was in error, could be appropriate. In other cases, however, in which the record indicates that there is a connection between the nuisance provision and the ''implementation, maintenance, and enforcement'' of the NAAQS, *see* CAA section 110(a)(1), an EPA action to unilaterally remove that provision from the SIP would be contrary to respecting the state's ''considerable latitude in determining specifically how the [NAAQS] would be met.'' *See Train,* 421 U.S. at 87.

In this case, the type of air pollution identified in the ANR—smoke, ashes, fumes, gases, and vapors—could have a nexus to several NAAQS, including particulate matter (PM), sulfur dioxide (SO_2), lead, and ozone. And as will be discussed at length in response to the next comment, the Ohio ANR has a demonstrated connection to the enforcement of the NAAQS. As acknowledged, the commenters have identified instances in which EPA has removed certain nuisance provisions from state SIPs. The commenters have not, however, identified any analogous situations in which EPA unilaterally removed a nuisance provision from a SIP notwithstanding a demonstrated connection between the nuisance provision and the attainment, maintenance, and enforcement of the NAAQS. As discussed in the February 2024 Proposed Rule, EPA's November 2020 Final Rule failed to consider information in the record demonstrating that the Ohio ANR had been used to enforce the NAAQS. Thus, the specific nature of Ohio's nuisance rule and the facts surrounding its use within the state indicate that EPA did not have an adequate basis in its November 2020 Final Rule to interfere with the choice that Ohio made to include the ANR when originally submitted for incorporation into its SIP in 1974. With respect to Ohio's position on this rulemaking, EPA notes that there is nothing to stop Ohio from undertaking the SIP revision process and exercising its ''continuing authority to revise choices about the mix of emission limitations,'' *see Train,* 421 U.S. at 87, included in its SIP, should Ohio determine that the ANR is no longer appropriate for inclusion in its SIP and such SIP revision removing the ANR meets applicable CAA requirements, including CAA section 193.

With respect to the commenter's contention that reinstating the ANR into Ohio's SIP would contradict EPA's decades-long practice and policy toward other states, and that EPA is treating Ohio inconsistently with other states that no longer have a nuisance rule in the SIP, EPA disagrees with this characterization of this action. As noted, any EPA action to include or remove a nuisance provision in a state SIP should be based on a fact-specific inquiry with respect to whether that specific provision helps provide for the ''implementation, maintenance, and enforcement'' of the NAAQS in that particular state. Commenters have not identified a factually analogous situation in which EPA has removed a nuisance provision from a SIP that has a demonstrated connection to the enforcement of the NAAQS. With respect to the commenter's contention that the inclusion of the ANR in the Ohio SIP impacts where facilities choose to build or expand, this is outside the scope of EPA's evaluation of whether EPA's action to remove the ANR from the SIP was in error. Again, we note that the State of Ohio has the discretion to submit a SIP revision to remove the ANR from its SIP at any time. In this action, EPA is not suggesting that the ANR must remain in Ohio's SIP in perpetuity; EPA is merely determining that its November 2020 Final Rule to unilaterally remove it was an error due to procedural and substantive deficiencies.

Comment: The commenter contends the ANR is not an enforceable emission limitation or other control measure,

means, or technique. According to the commenter, nor does the ANR provide for the enforcement of such measures, so it is not a required element of Ohio's SIP. The commenter acknowledges that a state may, for its own purposes, however, have other regulations that have the effect of improving air quality but do not have NAAQS compliance implications. But the commenter contends that neither the Ohio EPA nor citizens use the ANR to enforce the NAAQS. In the proposed rule, EPA references three citizen suits and one Ohio EPA action as demonstrating where the ANR was used as a tool to enforce the NAAQS. The commenter claims that the three citizen suit actions cited by EPA did not use the ANR to enforce the NAAQS, they used the ANR solely to allege public nuisance impacts to property owners from nearby industrial operations. Further, the commenter states that nowhere in any of the Claims for Relief in the complaints associated with these citizen suits is there a reference to the NAAQS, any reference to ambient concentrations of criteria pollutants, or any reference to use of the ANR to reduce ambient concentrations of criteria pollutants to below a NAAQS standard. The commenter alleges that the NAAQS are only referenced in passing in the preliminary facts of the complaints in providing background on the CAA. With respect to Ohio EPA's action related to Republic Steel, *State of Ohio* v. *Republic Steel,* Case No. 2021VC00949 (Stark County, Ohio), the commenter claims that there is no evidence that Ohio used the ANR against Republic Steel as a means to attain or maintain the lead NAAQS in Stark County, Ohio. The commenter acknowledges that the action cited the ANR and the lead NAAQS, but claims that action did not use the ANR to enforce the NAAQS. Rather, the commenter states that it used exceedances of the NAAQS as evidence of noncompliance with the ANR. A NAAQS exceedance tied to a specific facility is relevant evidence under Ohio Evid. R. 401 tending to prove the existence of a nuisance under Ohio Adm. Code 3745–15–07. However, according to the commenter, a nuisance action is not a means of ''enforcing'' the NAAQS or ensuring attainment and maintenance of the NAAQS. In the *Republic Steel* case, the State alleged multiple additional facts beyond a NAAQS exceedance. However, the commenter states that a NAAQS exceedance does not automatically create a nuisance violation, and a nuisance violation is not dependent on having a NAAQS exceedance. According to the commenter, Ohio considered the plant's impact on an air quality monitor that exceeded the NAAQS to be evidence of a threat to public health and therefore a nuisance, not that the NAAQS exceedance would be sufficiently addressed by a nuisance claim.

The commenter states that while the ANR may improve air quality, it does not ''enforce'' the NAAQS. The commenter acknowledges that it is possible that, while addressing a nuisance violation, a facility may reduce emissions of a criteria pollutant. According to the commenter, that coincidence of result is not the same as using the air nuisance rule for the purpose of ''enforcing'' or maintaining and achieving the NAAQS. The commenter states that EPA appears to conflate any improvement in air quality with ''enforce[ment of] the NAAQS.'' According to the commenter, the result of this is that EPA looks at the improvement the ANR may make to air quality as ''enforcing'' the NAAQS. The commenter claims that the CAA and EPA's own regulations do not make such a loose connection between air improvement and the NAAQS, and that the use of a NAAQS violation is a far cry from EPA's claim that the nuisance rule is ''used to enforce the NAAQS.''

Response: As a threshold matter, EPA reiterates the nature of the current action. Ohio included the ANR for approval into its SIP in 1974, and has not gone through the requisite SIP revision process to request that EPA remove the ANR from the State's SIP. As previously stated, EPA is not responsible for determining the appropriate ''mix of emission limitations,'' *Train,* 421 U.S. at 87, in the Ohio SIP to provide for attainment, maintenance, and enforcement of the NAAQS. Rather, EPA is tasked with evaluating whether Ohio's choices meet the CAA requirements. In this action, EPA is determining that our November 2020 Final Rule was deficient for multiple reasons. As relevant to this comment, one of those reasons is that EPA failed to adequately consider comments on the March 2020 Proposed Rule indicating the reliance on the ANR to enforce the NAAQS. Had we considered those comments, EPA would not have stated in the November 2020 Final Rule that ''the Ohio nuisance rule is not associated with the implementation, maintenance, or enforcement of the NAAQS.'' [6] For the reasons explained in our February 2024 Proposed Rule and this final rule and response to comments, EPA now acknowledges that the Ohio ANR does have a demonstrated connection to the implementation, maintenance, and enforcement of the NAAQS. Accordingly, our previous action to unilaterally remove it from Ohio's SIP was in error.

As a number of courts have recognized, Congress intended citizen suits under the CAA to be an important enforcement mechanism within the broader protective scheme of the CAA. ''The legislative history of the Clean Air Act Amendments reveals that the citizen suits provision reflected a deliberate choice by Congress to widen citizen access to the courts, as a supplemental and effective assurance that the Act would be implemented and enforced.'' *NRDC* v. *Train,* 510 F.2d 692, 700 (D.C. Cir. 1974). As noted by the Sixth Circuit, the petitioners in the *Sierra Club* case, and in comments on the March 2020 and February 2024 Proposed Rules, the ANR has been relied on in multiple CAA enforcement actions, including citizen suit enforcement cases.

Environmental Commenters' comments on the March 2020 Proposed Rule identified specific CAA citizen suits that relied on the ANR as a tool to enforce the NAAQS. As one example, Environmental Commenters pointed to a case in which an individual resident invoked the Ohio ANR to seek relief from numerous airborne pollutants emitted from a nearby waste treatment facility; the district court held, over the defendant's argument to the contrary, that the nuisance provision was federally enforceable. *See Fisher* v. *Perma-Fix of Dayton, Inc.,* No. 3:04–CV–418, 2006 WL 212076, at *5 (S.D. Ohio Jan. 27, 2006). That suit prompted intervention by EPA, which obtained a consent decree citing to the violation of the Ohio ANR as part of the Ohio SIP.[7] EPA notes that the terms of that consent decree included requirements for the facility to, among other things, install controls to limit emissions of Volatile Organic Compounds (VOCs), which are precursors to the formation of both ozone and PM. Ozone and PM are both criteria pollutants that are regulated by the NAAQS, and EPA further notes that Ohio currently has multiple nonattainment and maintenance areas for the ozone and PM NAAQS.

Local governments have also relied on the ANR to halt harmful air pollution and enforce the CAA. *See City of Ashtabula* v. *Norfolk S. Corp.,* 633 F. Supp. 2d 519, 528–29 (N.D. Ohio 2009). In that case, the Ohio Northern District

[6] 85 FR 73636 at 73638 (November 19, 2020).

[7] *See Fisher,* ''Consent Decree'' (September 14, 2017), at 1.

Court determined that the ANR is an emission limitation as defined in CAA section 302(k).[8] The defendant, owner and operator of a Coal Dock facility, moved to dismiss the claim brought under the citizen suit provision of the CAA (section 304), arguing that the ANR was precluded from citizen suit enforcement because it does not establish an emission limitation or standard under CAA section 302(k) given that it does not provide any identifiable limitation on the ''quantity, rate or concentration'' of a pollutant.[9] The court disagreed and denied the motion to dismiss, stating that:

> [Defendant's argument] must be rejected based upon an examination of the plain language of CAA § [302(k)] and OAC Rule 3745–15–07. OAC Rule 3745–15–07 finds the emission of pollutants ''*in such amounts* as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property'' to be a public nuisance and therefore unlawful. *Id.* (emphasis added by the court). While a numerical value is not explicitly stated, pollutants are limited to a quantity that doesn't endanger the public or cause unreasonable injury or damage to property. Because OAC Rule 3745–15–07 ''limits the quantity . . . of air pollutants[,]'' it qualifies as an emission standard or limitation under § [302(k)] of the CAA. Plaintiff can therefore bring Count Four under a CAA citizen suit.[10]

In their comments, Environmental Commenters also pointed to a case that was pending in the Southern District of Ohio at the time EPA finalized our November 2020 Final Rule to remove the ANR from Ohio's SIP. In that case, *Sampson* v. *SunCoke Energy,* 1:17–cv–00658–MRB (S.D. Ohio, filed in 2017), the plaintiffs alleged that numerous noxious and hazardous substances had previously been and continued to be released from the Haverhill Coke Company plant into the environment—that list included PM, PM_{10}, $PM_{2.5}$, nitrogen oxides (NO_X), VOCs, SO_2, and carbon monoxide, among many others.[11] EPA has established NAAQS for PM_{10}, $PM_{2.5}$, SO_2, and carbon monoxide; and NO_X and VOCs are precursors of both PM and ozone, which is another criteria pollutant. Thus, this case had a clear connection to the enforcement of the NAAQS. A motion to dismiss filed by defendants in 2018 alleged that many of the citizen suit claims overlapped with an ongoing Federal enforcement action, and the case was ultimately settled in 2021.[12] This case thus provides another example of how citizen suits can use the ANR as a tool to help limit emissions of NAAQS criteria pollutants and their precursors, contrary to the commenter's suggestions that citizen enforcement actions relying on the ANR are not used to enforce the NAAQS.

The commenters acknowledge that the ANR may improve air quality, but claim that such improvements do not equate to enforcing, achieving, or maintaining the NAAQS. They allege that EPA appears to conflate any improvement in air quality with enforcement of the NAAQS. EPA disagrees with the commenters' narrow reading of the CAA. As stated at the outset of this response, it is not EPA's responsibility to determine what mix of emission limitations the State should impose in its SIP to improve air quality and ultimately attain and maintain the NAAQS. *See Train,* 421 U.S. at 87. Furthermore, EPA reiterates that the Northern District of Ohio affirmatively determined that the ANR is an emissions limitation as defined by CAA section 302(k).[13] Imposing emission limitations on sources of pollution is a primary method that states utilize in constructing SIPs that demonstrate how they will attain and maintain the NAAQS, and, contrary to the commenter's suggestion, a particular emissions limitation need not demonstrate how it would directly lower the concentration of a specific criteria pollutant as a prerequisite for approval into the SIP. In this action, EPA is merely determining that our prior determination that the ANR was ''not associated with the implementation, maintenance, or enforcement of the NAAQS'' was incorrect. Our unilateral removal of the ANR from Ohio's SIP was contrary to giving the State ''considerable latitude in determining specifically how the [NAAQS] would be met'' [14] where the Ohio ANR has a clear connection to the implementation, maintenance, and enforcement of the NAAQS. Even if the ANR were not considered to be an emissions limitation under the definition of that term in CAA section 302(k), it would still squarely fall into the category of ''other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of this chapter.'' CAA section 110(a)(2)(A). Unlike ''emissions limitations,'' which is a term with a specific definition under CAA section 302(k), the CAA does not specifically define ''control measures, means, or techniques.'' EPA notes that these are inherently capacious terms, and in the absence of a specific statutory definition, there is nothing about these terms that would preclude the ANR from being characterized as falling within their broad meanings. EPA therefore interprets these terms broadly in accordance with their plain meanings, *i.e.,* that they refer to any ''measures, means, or techniques'' that impose some form of ''control'' with respect to any of the NAAQS pollutants. The plain meaning of measure, in this context, could include any requirement that imposes some sort of control that may be necessary or appropriate to meet the applicable requirements of the CAA. Similarly, a means or technique in this context could include any sort of method or procedure for imposing controls as may be necessary or appropriate to meet CAA requirements. As illustrated by the specific examples in this response, the ANR has been invoked on multiple occasions with the goal and ultimate outcome of limiting emissions of criteria pollutants and their precursors. Thus, the ANR has been used as a measure, means, or technique, to control relevant emissions as may be necessary or appropriate to meet CAA requirements.

With respect to the commenter's specific assertions regarding the *Republic Steel* case,[15] EPA disagrees with commenters' characterization of that case as being irrelevant to an evaluation of whether the ANR is used to enforce the NAAQS. The commenters acknowledge that the Republic Steel facility's NAAQS exceedances can be evidence of a nuisance claim, but allege that this is distinguishable from using the ANR to enforce the NAAQS. However, the complaint filed by the State of Ohio (''Complaint''), as well as the consent order and final judgment (''Consent Order''), provide important context and details with respect to the relationship of this case to the State's enforcement of the lead NAAQS.

First, the Complaint states the ''Republic Steel is the *only* known source of lead in the vicinity of the Georgetown Rd. lead monitoring site''

[8] *Ashtabula,* 633 F. Supp. 2d at 528.

[9] *Id.* The CAA citizen suit provision allows a person to commence a civil action on his own behalf ''against any person . . . who is alleged to have violated . . . an emission standard or limitation under this chapter.'' CAA section 304(a).

[10] *Id.* At 528–29.

[11] *See Sampson,* ''Complaint and Demand for a Jury Trial'' (September 29, 2017), at ¶ 1.

[12] *See Sampson,* ''Defendants' Memorandum in Support of Motion to Dismiss Counts Four (in part), Five, Seven, Ten, Fifteen, Sixteen, Eighteen, Nineteen, Twenty-Two, Twenty-Three, Twenty-Four (in part), Thirty and Thirty-Two of Plaintiffs' Complaint'' (April 6, 2018), at 1; *see also Sampson,* ''Order'' (September 30, 2021).

[13] *Ashtabula,* 633 F. Supp. 2d at 528.

[14] *Train,* 421 U.S. at 87.

[15] *State of Ohio* v. *Republic Steel,* Case No. 2021CV00949 (Stark County, Ohio).

(emphasis added).[16] Second, the Complaint states that ambient air monitoring results from the Georgetown Rd. monitoring site measured 0.25 micrograms per cubic meter (μg/m^3) from March 2018 through May 2018, and 0.167 μg/m^3 from January 2019 through March 2019, while noting that the lead NAAQS is 0.15 μg/m^3.[17] Third, the Complaint details how the Ohio EPA Director issued ''Final Findings and Orders'' to the defendant (Republic Steel), ordering the defendant ''to alleviate the excess lead emissions at the Facility,'' to include ceasing operation during times of high lead emissions or until corrective actions were taken.[18] Notwithstanding those Orders, the defendant then emitted levels of lead in the amounts of 1.69, 2.6, and 2.26 μg/m^3 on May 7, 9, and 13 of 2021, respectively.[19]

In light of these facts, the State of Ohio brought the nuisance claim based on the Ohio ANR as the sole count in the original Complaint.[20] Under this count, the Complaint states: ''[o]n numerous occasions since at least May 2018, Defendant has caused or allowed lead emissions to emit from the Facility *that led to* exceedances of the lead NAAQS three month average and thus endangered the health, safety or welfare of the public and/or caused unreasonable injury or damage to property'' (emphasis added).[21] In other words, the Complaint did not merely point to NAAQS exceedances as evidence of a nuisance; instead, the complaint alleged that the lead emissions from the facility—the sole known source of lead emissions in the vicinity of the relevant air monitor—*caused* these NAAQS exceedances. And the State of Ohio used this action, relying on the ANR, to obtain permanent injunctive relief (as entered in the Consent Order) that requires the Republic Steel facility to ''provide Ohio EPA and CAPC [Canton City Public Health Air Pollution Control Division] staff access to the air monitoring platform associated with the Fenceline Monitor,'' explaining that ''[t]he purpose of the source-oriented monitor pursuant to 40 CFR 58.10(a)(4) is to determine compliance with the NAAQS for lead.'' [22] Further, the Consent Order requires that the facility either comply with the lead NAAQS (as demonstrated by the required monitoring), or ''immediately cease activities that are creating or could possibly be contributing to the NAAQS exceedance.'' [23]

In short, the State of Ohio relied on the ANR to address excess lead emissions from the Republic Steel facility that were causing consistent NAAQS exceedances despite the Ohio EPA's attempts to address such excess emissions through another avenue (Director Final Findings and Orders). Ultimately, the State of Ohio secured injunctive relief to ensure that the facility either complies with the lead NAAQS, or ceases operations that could even possibly be contributing to the NAAQS exceedance (*i.e.,* anything contributing to excess lead emissions). This confirms that the State of Ohio used the ANR to ensure the Republic Steel Facility complies with the lead NAAQS—in other words, to enforce the lead NAAQS.

Comment: The commenter contends the ANR does not meet the CAA's requirements for inclusion in a SIP. The commenter states that when the ANR was incorrectly included into the SIP that was approved in 1974, then-section 110(a)(2)(A) of the CAA (reworded and renumbered section 110(a)(2) in the 1990 CAA amendments) called for approval of a SIP if it ''includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of [the NAAQS].'' According to the commenter, the ANR fails that test. The commenter claims that Ohio has never relied on the ANR as a strategy for attaining or maintaining the NAAQS. Further, the commenter states that Ohio has never given notice and opportunity to comment on, or proposed or supported, the proposition that the ANR is necessary or appropriate to attain and maintain the NAAQS. The commenter contends that Ohio's federally-approved NAAQS demonstrations, which rely exclusively upon enforceable numerical emission limitations and other control requirements applicable to existing stationary sources, do not rely on the ANR. The commenter notes that the ANR makes no reference to, and is not concerned with, criteria pollutants or NAAQS. The commenter states that EPA must consistently apply its interpretation that nuisance provisions, odor provisions, and general prohibitions on air pollution do not belong in SIPs, because they do not have a reasonable connection to the NAAQS and/or are not designed to control NAAQS pollutants such that EPA could rely on them as a NAAQS attainment and maintenance strategy. According to the commenter, while the nuisance rule may have an impact on emissions, it is not a tool that measures Ohio's compliance with the NAAQS as required by section 110(a)(2) of the CAA. The commenter alleges that the ANR is an inappropriate measure for attaining and enforcing the NAAQS, and claims that EPA would never approve it as a strategy for reducing emissions in a SIP. Further, the commenter states that EPA cannot use NAAQS attainment as a reason to reintroduce the ANR into the Ohio SIP, and that the ANR is too broad, vague, inchoate, and unpredictable in its application to and impact upon criteria pollutant emissions from existing stationary sources to be SIP approvable. In addition, the commenter states that the ANR was not designed or intended by Ohio to federalize ''overkill'' reductions of criteria pollutant emissions more stringent than necessary to attain and maintain the NAAQS. Further, the commenter claims that Ohio has not utilized the ANR for the SIP strategies for the 2015 ozone standards, the 2012 p.m. standard, and the ''bump up'' to moderate ozone nonattainment in the Cleveland area. In the upcoming Canton lead submittal to address the SIP call, according to the commenter, Ohio EPA will not rely on the ANR for attainment of the NAAQS. The commenter further states that EPA dictates a rigorous methodology for the approval of a SIP to address a revised NAAQS or a violation of the NAAQS. For example, the commenter notes that the various steps in developing an attainment demonstration SIP are involved and lengthy, and claims that none of those steps were used by EPA when it proposed to reinstate the nuisance rule into the Ohio SIP.

Response: EPA disagrees with the commenter's statement that the ANR is not appropriate for inclusion in the SIP because it fails the test for approval of a SIP, which in the CAA as it existed in 1974 was that the SIP ''includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of [the NAAQS].''

The commenters misunderstand what the State is required to show to include a certain emissions limitation or control measure in its SIP. States are generally

[16] *Republic Steel,* ''Complaint for Injunctive Relief and Civil Penalties'' (July 2, 2021), at ¶ 16.

[17] *Id.* at ¶ 17, 19.

[18] *Id.* at ¶ 18.

[19] *Id.* at ¶ 19.

[20] EPA acknowledges that the State amended its original complaint to supplement it with additional counts. However, the original count relying on the ANR remained intact in the amended complaint. *See Republic Steel,* ''Amended and Supplemental Complaint for Injunctive Relief and Civil Penalties'' (Mar. 14, 2023), at ¶ 88.

[21] Complaint at ¶ 35.

[22] *Republic Steel,* ''Final Consent Order and Final Judgment Entry'' (December 12, 2023), at ¶ 16.

[23] *Id.* at ¶ 17.

not required under CAA section 110 to ''rely upon'' a measure to model attainment or maintenance of the NAAQS in order for that measure to be eligible for inclusion in the SIP. A certain subset of SIPs, namely nonattainment SIPs under part D of the CAA, do require certain technical analyses to demonstrate measures included in the nonattainment SIP will model attainment or maintenance of the NAAQS, but this is not a requirement for each and every SIP submission. Ohio itself has submitted a number of SIPs that do not include a demonstration that its measures model attainment or maintenance of the NAAQS.[24] As stated in previous comment responses, Congress ''left to the States considerable latitude in determining specifically how the [NAAQS] would be met. This discretion includes the continuing authority to revise choices about the mix of emission limitations'' [25] in order to ensure implementation, maintenance, and enforcement of the NAAQS.[26]

Moreover, the ANR *does* have a demonstrated connection to implementation, maintenance, and enforcement of the NAAQS, and is therefore properly included in Ohio's SIP. As described in a previous comment response, the Southern District of Ohio has confirmed that the ANR meets the definition of an emission limitation as defined under CAA section 302(k). Again, we note that the State has the discretion to revise its ''choices about the mix of emission limitations'' in its SIP at any time, *Train,* 421 U.S. at 87, and that EPA will approve such choices provided they are consistent with all CAA requirements. The ANR has been used in a number of actions to enforce the NAAQS. As such, the State of Ohio properly included the ANR in its SIP, and EPA's November 2020 Final Rule was in error.

With respect to specific attainment demonstrations related to SIP calls and relatively recently promulgated NAAQS cited by commenters, the State was not required to rely on the ANR in these attainment demonstrations in order to allow the ANR to remain in the SIP. As explained, states have wide discretion in how they implement the requirement to provide for ''implementation, maintenance, and enforcement'' of the NAAQS, and states can and do include control measures in their SIPs that are not cited in their modeled attainment demonstrations. Typically, emissions reductions that are modeled in the attainment demonstration are required for the state to attain the NAAQS by the applicable attainment date. But as discussed above, states' discretion in crafting their SIPs also encompasses the flexibility that ''[s]tates may submit implementation plans more stringent than federal law requires'' and the Supreme Court has instructed that EPA ''must approve such plans if they meet the minimum requirements of § 110(a)(2).'' [27] Thus, the mere fact that Ohio has not included the ANR in recent attainment demonstration submissions and therefore is not relying on the ANR in those demonstrations to result in a certain quantity of emissions reductions required to attain the NAAQS, does not mean that the ANR is not an approvable control measure for inclusion in the SIP.

Comment: The commenter asserts that the nuisance rule cannot be modeled and does not contain numerical criteria, technical control measures, or specific compliance standards. According to the commenter, without extensive and technical parameters, the nuisance rule cannot be relied on in demonstrating that a state has an approvable SIP. The commenter claims that for this reason, EPA has been using the error-correction authority in removing nuisance and other odor provisions similar to the ANR from other SIPs. The commenter further claims that EPA does not have the technical support to reintroduce the ANR into the SIP, and that the ANR does not contain a demonstration of how the rule is used to address the NAAQS. According to the commenter, EPA is not able to quantify the amount of emission reductions attributable to the application of the ANR or illustrate how the nuisance provisions have an impact on air quality through modeling. Without such analysis, the commenter claims that EPA fails to provide a justification that the ANR belongs in the SIP. The commenter states that it is clear that Ohio does not rely on the ANR to enforce the NAAQS because the applicability and emission impacts of the ANR are not known or knowable in advance and are not capable of pre-enforcement correlation with NAAQS attainment. The commenter alleges that the recent decision in the *Environmental Committee* [28] case illustrates the problem of EPA reintroducing the nuisance rule into the SIP because the nuisance rule is simply not a ''necessary or appropriate'' emissions limitation or other control strategy that is needed to be part of a SIP.

Response: As explained above, EPA is not responsible for quantifying the amount of emission reductions attributable to the application of the ANR, nor is EPA required to illustrate how the nuisance provisions have an impact on air quality through modeling or other technical justifications. Rather, the State is responsible for determining the appropriate mix of emissions limitations and control measures to ensure the SIP's compliance with CAA requirements. And as emphasized previously, ''[e]ach State is given wide discretion in formulating its [SIP], and the Act provides that the [EPA] 'shall approve' the proposed plan if it has been adopted after public notice and hearing and if it meets'' the requirements of CAA section 110(a)(2).[29]

As a general matter, EPA is tasked with evaluating SIP submissions for compliance with the CAA requirements, not with overriding state choices with respect to the appropriate mix of emissions limitations and control measures to meet those requirements.[30] And in this particular action, pursuant to the Sixth Circuit's remand of our November 2020 Final Rule, EPA must evaluate whether that November 2020 Final Rule unilaterally removing the ANR from the Ohio SIP was a proper use of our authority under CAA section 110(k)(6). For the reasons explained at length in this action, EPA has

[24] EPA notes that Ohio has not always demonstrated attainment with certain NAAQS through modeling. The State has also demonstrated attainment with a particular standard by providing monitoring data, emissions inventories, and permanent and enforceable control measures responsible for the reduction in emissions. *See* EPA approvals of redesignations for the 1997 Ozone NAAQS standard in the Cincinnati-Hamilton Area [75 FR 26118 (May 11, 2010)], Cleveland-Akron-Lorain Area [74 FR 47414 (September 15, 2009)], Columbus Area [74 FR 47404 (September 15, 2009)], and the Dayton-Springfield Area [72 FR 45169 (August 13, 2007)]; the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS standards in the Cleveland-Akron-Lorain Area [78 FR 57270 (September 18, 2013)]; the 2008 Ozone NAAQS standard in the Cincinnati Area [81 FR 91035 (December 16, 2016)] and the Columbus Area [81 FR 93631 (December 21, 2016)]; and the 2015 Ozone NAAQS standard in the Cincinnati area [87 FR 35104 (June 9, 2022)] and the Columbus area [84 FR 43508 (August 21, 2019)].

[25] *Train,* 421 U.S. at 87.

[26] EPA also notes that Ohio has submitted control measures for inclusion its SIP that do not specifically quantify the amount of emissions reductions such measures would achieve, but that still contribute to implementation, maintenance, and enforcement of the NAAQS. *See, e.g.,* EPA approval of Ohio's Open Burning Rules [84 FR 29378 (June 24, 2019), originally approved into the SIP at 43 FR 4611 (Feb. 3, 1978)].

[27] *Union Elec.,* 427 U.S. at 265.

[28] *See Env't Comm. of the Fla. Elec. Power Coordinating Grp., Inc. EPA,* 94 F.4th 77 (D.C. Cir. 2024).

[29] *Union Elec.,* 427 U.S. at 250.

[30] *See, e.g., Mich.* v. *EPA,* 213 F.3d 663, 687 (D.C. Cir. 2000) (''While the states have considerable latitude in fashioning SIPs, the CAA 'nonetheless subjects the States to strict minimum compliance requirements' and gives the EPA the authority to determine a state's compliance with the requirements'' (citing *Union Elec.,* 427 U.S. at 256–57)).

concluded that our November 2020 Final Rule revising the Ohio SIP was in error, and EPA has decided to reinstate the ANR into the SIP for those reasons.

Regarding the *Environmental Committee* decision, EPA disagrees with the commenter with respect to that decision's implications for the action here. That decision speaks to what is required for EPA to determine whether certain emissions limitations are substantially inadequate such that EPA could issue a SIP call under CAA section 110(k)(5) with respect to those emissions limitations.[31] In this action, EPA is not required to make a finding as to whether a particular emissions limitation is necessary or appropriate to ensure compliance with CAA requirements. To the contrary, EPA is concluding that EPA improperly disregarded the ANR's role in enforcement of the NAAQS, and improperly took action to override the State's decision to include the ANR in its SIP by unilaterally removing it in our November 2020 Final Rule. Accordingly, EPA is correcting that error in this action.

Comment: The commenter alleges the ANR is not part of Ohio's infrastructure SIP, which provides for the enforcement of the NAAQS. The commenter states that the CAA mandates a program for enforcement of the NAAQS through the development of an infrastructure SIP for enforcement of the control measures relied upon to attain and maintain the NAAQS. The commenter notes that EPA's Infrastructure SIP guidance requires the SIP to specifically identify the ''statutes, regulations, or other provisions . . . that provide for enforcement of those emission limits'' that have been identified as being necessary for NAAQS attainment and maintenance. According to the commenter, a state's program to ''enforce the NAAQS'' is therefore an EPA-approved program of specifically identified statutes and rules, not an ad hoc collection of any rules that have the potential to impact air emissions. The commenter alleges that the only statutory or regulatory provision that Ohio EPA has identified in its infrastructure SIP for the purposes of enforcing the NAAQS is O.R.C. section 3704.03(R), and that EPA cannot broaden the infrastructure SIP by unilaterally adding the ANR.

Response: EPA has issued non-binding guidance on what EPA refers to as ''infrastructure SIP submissions.'' [32] As stated in that guidance document, the ''conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both.'' [33]

The commenter seems to suggest that every provision in a state's SIP that is used to enforce the NAAQS must be included in the state's infrastructure SIP submission, and that if a provision that is used to enforce the NAAQS is not included in that SIP submission, it is somehow improper for the state to include it in the SIP at all. However, EPA does not apply such a rigid approach to SIP submissions, nor is the commenter's suggested approach mandated by the CAA. The CAA does not indicate that all SIP provisions intended to enforce the NAAQS must be included in the ''infrastructure SIP submission''—in fact, the CAA does not mention ''infrastructure SIP submissions'' at all. EPA has created the structure and deadlines for states to submit what we refer to as infrastructure SIP submissions in order to ensure that states meet certain CAA requirements. And as mentioned, the purpose of that SIP submission is to ensure that the SIP ''contains the necessary structural requirements'' for a new or revised NAAQS.

EPA therefore does not take the position that every single provision that is ever used to enforce the NAAQS must be included in a state's infrastructure SIP. Infrastructure SIP submissions are distinct from nonattainment plan SIP submissions, which also contain emissions limitations and methods for enforcement, such as required monitoring, recordkeeping, and reporting requirements. Just because a state does not include a certain provision in its infrastructure SIP submission does not mean that it is improper for the state to then use that provision for enforcement purposes.

Moreover, the commenter alleges that EPA is impermissibly broadening the infrastructure SIP by reinstating the ANR into the SIP. EPA is not, and could not, unilaterally place the ANR into an infrastructure SIP submission that has already been submitted and approved by EPA. EPA is not broadening the infrastructure SIP, rather, it is merely reinstating the ANR to the Ohio SIP as it existed prior to EPA's action in the November 2020 Final Rule, which for the reasons we have described in this action, we have determined was in error.

Comment: The commenter states that neither the Constitution nor the CAA permits EPA to delegate responsibility for establishing SIP emission control requirements to the Federal judiciary. The commenter alleges that the Proposed Rule is inconsistent with the CAA because it would give Federal district courts jurisdiction to decide, in CAA citizen suits, the source-specific controls needed to attain and maintain, and enforce, the NAAQS. The commenter states that the Constitution does not allow states to ordain and establish Federal judicial power, and the CAA should not be read to include any implicit delegation of that power to the states. In addition, the commenter notes that section 110 of the CAA gives each state primary authority to choose the mix of source-specific emission controls and associated monitoring, testing, and enforcement provisions that will suffice to attain and maintain the NAAQS. According to the commenter, including a nuisance rule in a SIP would effectively delegate state executive authority under section 110 to Federal judges. Finally, the commenter notes that section 307(b) of the CAA gives Federal circuit courts, not district courts, exclusive jurisdiction to review EPA actions to determine the approvability of state plans to achieve the NAAQS and state-promulgated SIP measures to enforce those plans.

Response: As stated throughout this action, EPA agrees with the commenter that section 110 of the CAA gives each state primary authority to choose the mix of source-specific emission controls and associated monitoring, testing, and enforcement provisions that will suffice to attain and maintain the NAAQS. To that end, in this action, EPA is restoring the ANR as Ohio had included it and as it had existed for more than four decades in the Ohio SIP prior to our erroneous action to remove it in November 2020.

With respect to the commenter's contention that Ohio's inclusion of the ANR in its SIP impermissibly delegates state authority to Federal judges, EPA observes that the CAA is structured around the principle of cooperative federalism. In other words, the CAA creates a system of shared state and Federal responsibility. With respect to enforcing the SIP, a state must provide ''necessary assurances'' that it has the authority to enforce SIP provisions as a prerequisite for EPA to approve those

[31] *See, e.g., Env't Comm.*, 94 F.4th at 100.

[32] *See* Stephen D. Page, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'', September 13, 2013, available at *https://www.epa.gov/sites/default/files/2015-12/documents/guidance_on_infrastructure_sip_elements_multipollutant_final_sept_2013.pdf.*

[33] *Id.* at 2.

provisions into the SIP. *See* CAA section 110(a)(2)(E). Once a provision is approved into the SIP, the state retains the authority to enforce it, and in addition, EPA has the authority to enforce it, *see* CAA section 113, as do members of the public, under the CAA section 304 citizen suit provision. Thus, Federal enforcement of SIP provisions is integral to the structure of the CAA, whether by EPA or by the public. The commenter is correct that this could result (and, has in the past resulted) in CAA citizen suit claims to enforce the ANR in Federal district courts. But this does not mean that the states are delegating or establishing power in the Federal judiciary. This is just the CAA's structure of cooperative federalism that Congress created. The ANR can be enforced in state court, and it can be enforced in Federal court because it is part of the federally-approved SIP. The same is true of any SIP provision in any state. To the extent the commenter has an issue with the CAA's cooperative federalism model, that is of course outside the scope of the current rulemaking.

Additionally, EPA agrees with the commenter that CAA section 307(b) gives Federal circuit courts, not district courts, exclusive jurisdiction to review EPA actions on SIPs. The commenter appears to be conflating enforcement of SIP provisions (which as mentioned, could occur through state or Federal court actions), with Federal circuit court review of EPA actions on SIP submissions. Nothing about this action indicates that EPA disagrees that Federal circuit court review is the appropriate forum for review of EPA actions on SIP submissions.

Comment: The commenter notes that EPA contends it should have first performed an anti-backsliding analysis before correcting the SIP. However, according to the commenter, SIP corrections do not require an anti-backsliding analysis. The commenter asserts that requirements under CAA section 193 would not apply to the removal of the ANR from Ohio's SIP for attainment areas because the ANR is not a ''control requirement.'' The commenters further assert that, because the ANR's inclusion in the Ohio SIP was in error, it is not a ''control requirement'' triggering the need for an anti-backsliding analysis upon removal from the SIP under CAA section 193, 42 U.S.C. 7515.

The commenters also argue that EPA's interpretation of the anti-backsliding provision in CAA section 193 would conflict with EPA's SIP correction authority under CAA section 110(k)(6). According to the commenters, if the ANR is not a necessary or appropriate element of a SIP, then removing it cannot be considered backsliding under CAA section 110(l), because an anti-backsliding analysis is only concerned with emissions of criteria pollutants in areas that are non-attainment for those pollutants. The commenters state that since emissions addressed by the ANR cannot be quantified, a backsliding analysis is not justified, and that given the State's position, engaging in a backsliding analysis does not make sense. The commenters also contend that even if an anti-backsliding analysis were required, EPA must conduct it before finalizing this rulemaking.

Response: EPA disagrees with the commenter's claim that an anti-backsliding analysis was not required for EPA's November 2020 Final Rule removing the ANR from the Ohio SIP. The plain language of CAA section 193 precludes this conclusion.

CAA section 193 provides, in relevant part, that no control requirement in effect before November 15, 1990, ''in any area which is a nonattainment area for any air pollutant may be *modified* after November 15, 1990, *in any manner* unless the modification insures equivalent or greater emission reductions of such air pollutant'' (emphasis added). The CAA does not specifically define what qualifies as a ''control requirement'' in the context of section 110 SIPs, and EPA therefore interprets the term broadly in accordance with its plain meaning, *i.e.,* that it refers to any ''requirement'' that imposes some form of ''control'' with respect to any of the NAAQS pollutants. The term ''control requirement'' is similar to the language in CAA section 110(a)(2)(A) referring to ''emissions limitations and other control measures, means, or techniques.'' As explained and illustrated by the specific examples in a previous comment response, the ANR has been invoked on multiple occasions with the goal and ultimate outcome of limiting emissions of criteria pollutants and their precursors. Thus, the ANR has been used as a measure, means, or technique, to control relevant emissions, which means that it squarely falls within the definition of a ''control requirement'' as the term is used in CAA section 193.

Thus, CAA section 193 prohibits the modification of the ANR ''in any manner'' unless there is a showing that the modification would result in equivalent or greater emissions reductions, which is commonly referred to as an anti-backsliding analysis. The plain meaning of ''modify'' is to make a change to something, and the qualifier ''in any manner'' indicates that the requirement for an anti-backsliding analysis is triggered by *any* possible change to a control requirement that otherwise meets the requirements of this section. EPA does not see any statutory basis for concluding that an anti-backsliding analysis was not required for EPA's November 2020 Final Rule removing the ANR from Ohio's SIP. To the contrary, such an interpretation would directly undermine the plain language of section 193, which encompasses changes to the SIP made ''in any manner.''

For support, the commenter cites to a 1996 SIP action approving Arizona's contingency measures and withdrawing its Federal Implementation Plan (FIP) ''contingency process,'' in which EPA took the position that CAA section 193 was not applicable. In the context of this action, EPA acknowledged that ''the term 'control requirement' is not defined in the Act,'' and stated that ''it is generally viewed as a discrete regulation directed at a specific source of pollution.'' [34] EPA distinguished this from the ''contingency process'' at issue in that action, which was not grounded in a statutory requirement and was based on 1982 guidance ''designed to fill a perceived gap in the absence of a statutory requirement.'' [35] The 1982 guidance required ''a list of planned transportation measures and projects that *may* adversely affect air quality and that will be delayed, while the SIP is being revised'' (emphasis added), and ''a description of the process that will be used to determine and implement additional transportation measures beneficial to air quality that will compensate for the unanticipated shortfalls in emission reduction.'' Further, in the 1996 action, EPA explained how the 1990 Amendments to the CAA filled the identified statutory gap by adding the section 172(c)(9) contingency measure requirement to the CAA, rendering EPA's pre-amendment 1982 guidance, and the ''contingency process'' implementing that guidance, ''inconsistent with this new statutory scheme'' and thus ''ineffective under section 193.'' [36]

In other words, EPA determined that the ''contingency process'' was not a control measure because ''[a] list of highway projects that may be delayed and a description of actions that may occur at some later date are not control requirements,'' and because section 193 precluded the contingency process under the first part of that section,

[34] 61 FR 51999 at 51602 (October 3, 1996).

[35] *Id.*

[36] *Id.*

which reads: ''Each regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator as in effect before November 15, 1990 shall remain in effect according to its terms, *except to the extent otherwise provided under this chapter, inconsistent with any provision of this chapter,* or revised by the Administrator.'' [37] The ANR is distinguishable from the ''contingency process'' because (1) it can be considered a control requirement with demonstrated impacts on emissions, as explained at length in this action, and (2) it is not based on outdated guidance that has been superseded by the CAA Amendments of 1990.

With respect to the commenter's assertions regarding the requirements of CAA section 110(l), EPA notes that we did not rely on CAA section 110(l) in our proposed rule as a basis for determining our prior November 2020 Final Rule was in error. As discussed elsewhere, EPA has concluded that an anti-backsliding analysis should have been conducted for the November 2020 Final Rule under section 193. While CAA section 110(l) was not a basis for EPA's proposed rule, EPA disagrees with the commenter that if the ANR is not a necessary or appropriate element of a SIP, then removing it cannot be considered backsliding under CAA section 110(l). The commenter misstates the requirements of 110(l), which prohibits EPA from approving a SIP revision if it would interfere with any applicable requirement concerning attainment of the NAAQS, *or* any other applicable requirement of the CAA. Whether the ANR is a necessary or appropriate element of a SIP because the State has not relied on it for attainment of the NAAQS therefore is not the only relevant inquiry under CAA section 110(l). As CAA section 110(l) is not applicable to the present action, EPA need not consider whether we are prohibited under this provision from approving removal of the ANR from the SIP.

Finally, EPA disagrees with the commenter that EPA is required to conduct an anti-backsliding analysis for this action reinstating the ANR into the Ohio SIP. The commenter misstates the standard that section 193 applies in asserting that EPA must determine that removing the ANR from Ohio's SIP would result in *lesser* reductions. Under section 193, the only requirement is that the modification must insure ''equivalent or greater reductions.'' The commenter identifies no basis for concluding that reinstating the ANR does not provide for ''equivalent or greater reductions,'' *i.e.,* that it would increase emissions. As discussed at length in this action, the ANR has been used to enforce the NAAQS and has resulted in emissions reductions in the past. The ANR has also been deemed an emission limitation within the meaning of CAA section 302(k).[38] There is therefore no basis to conclude that reinstating the ANR into the SIP would result in increased emissions. There is reason to believe, based on the record, that having the ANR in the SIP will continue to result in emissions reductions. But even if that is not the case, the ANR would still result in at least ''equivalent reductions'' as would not including it in the SIP at all.

Comment: The commenter states that there are multiple mechanisms by which Ohio citizens can redress alleged air pollution at the state level regardless of whether the ANR is in the SIP. In contrast, according to the commenter, reinstating the ANR would harm Ohio businesses, with no corresponding benefit to the environment because potential citizen suits under the CAA could result in attorneys' fees being awarded to prevailing parties.

Response: With respect to the commenter's assertion that there are multiple mechanisms by which Ohio citizens can address air pollution regardless of whether the ANR is in the SIP, EPA wholeheartedly supports providing different mechanisms for the public to address air pollution. In this action, EPA is not making a determination as to whether the Ohio State system provides for adequate opportunities for the public to address air pollution. Instead, EPA is merely determining that its November 2020 Final Rule removing the ANR from the Ohio SIP was deficient because EPA failed to consider the ANR's role in the enforcement of the NAAQS, and because EPA failed to conduct an anti-backsliding analysis under CAA section 193.

EPA understands the commenter's assertion that reinstating the ANR into the SIP would harm Ohio businesses to suggest that the consequences of noncompliance with the ANR could be more severe in a CAA citizen suit brought in Federal court, because prevailing parties may be awarded attorney's fees. While EPA acknowledges that this could be a consequence of noncompliance with the ANR, EPA does not find this a relevant consideration for this action. EPA is not obligated, and the commenter has not identified any statutory or otherwise legal basis for such obligation, to consider the potential adverse consequences of noncompliance with the ANR for Ohio businesses in determining whether its November 2020 Final Rule was in error.

III. What action is EPA taking?

EPA has considered the comments received on its February 2024 Proposed Rule, and is finalizing its action as proposed, for the reasons described in the February 2024 Proposed Rule, this final rule, and the response to comments herein. EPA is taking this action to reverse its November 2020 removal of the ANR and to reinstate OAC 3745–15–07 into the Ohio SIP, under its authority in CAA section 110(k)(6) and its inherent reconsideration authority, and consistent with the requirements of CAA section 110(a)(2). EPA has determined that its prior action removing OAC 3745–15–07 from the Ohio SIP was deficient for two reasons: (1) because EPA failed to adequately consider the ANR's use in enforcement of the NAAQS, and (2) because EPA failed to conduct an anti-backsliding analysis pursuant to section 193 of the CAA. EPA has determined that the ANR was appropriately included in the Ohio SIP as part of the State's collection of ''enforceable emission limitations and other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of [the CAA].'' *See* CAA section 110(a)(2). Accordingly, EPA is recodifying this reinstatement by revising the appropriate paragraph under 40 CFR part 52, subpart KK, § 52.1870 (Identification of Plan).

IV. Incorporation by Reference

In this action, EPA is reinstating regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Ohio Regulations described in section III. of this preamble and set forth in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the 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

[37] *Id.* (emphasis in original) (citing to CAA section 193).

[38] *Ashtabula,* 633 F. Supp. 2d at 528.

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.[39]

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), and 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 communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

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 March 24, 2025. 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: January 10, 2025.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated 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.*

■ 2. In § 52.1870, the table in paragraph (c) is amended under the section entitled ''Chapter 3745–15 General Provisions on Air Pollution Control'' by adding an entry for ''3745–15–07'' after the entry for ''3745–15–06'' to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED OHIO REGULATIONS

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
*	* * * * *	*	*	*
	Chapter 3745–15 General Provisions on Air Pollution Control			
*	* * * * *	*	*	*
3745–15–07	Air Pollution Nuisances Prohibited	5/17/1982	8/13/1984, 49 FR 32182	

[39] 62 FR 27968 (May 22, 1997).

EPA-APPROVED OHIO REGULATIONS—Continued

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
*	*	*	*	*	*	*

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[FR Doc. 2025–00968 Filed 1–17–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0448; FRL–11677–03–R9]

Approval and Promulgation of Implementation Plans; State of California; Coachella Valley; Extreme Attainment Plan for 1997 8-Hour Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve elements of a state implementation plan (SIP) submittal from the State of California to meet Clean Air Act (CAA) ''Extreme'' nonattainment area requirements for the 1997 8-hour ozone national ambient air quality standards (NAAQS) in the Riverside Co. (Coachella Valley), CA nonattainment area (''Coachella Valley''). We are specifically approving the reasonable further progress (RFP) demonstration and the vehicle miles traveled demonstration.

DATES: This rule is effective February 20, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2023–0448. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, Geographic Strategies and Modeling Section (AIR–2–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3856; or email: *kelly.thomasp@epa.gov.*

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

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I. Proposed Action

A. Summary

On April 16, 2024,[1] the EPA proposed to approve two SIP submittals from the South Coast Air Quality Management District (SCAQMD or ''District'') and the California Air Resources Board (CARB) addressing the Extreme area planning requirements for the 1997 ozone NAAQS in Coachella Valley. The first submittal, the ''Final Coachella Valley Extreme Area Plan for the 1997 8-Hour Ozone Standard'' (''Coachella Valley Ozone Plan'' or ''Plan''),[2] was prepared by the SCAQMD and submitted by CARB on December 29, 2020.[3] We proposed to approve all elements of the Plan except the reasonably available control technology (RACT) demonstration, which we plan to address in a subsequent rulemaking. The second submittal, the ''2020 Coachella Valley Vehicle Miles Traveled Emissions Offset Demonstration'' (''VMT Offset Demonstration''),[4] was prepared by CARB and submitted on March 18, 2021.[5] We proposed to approve the entire VMT Offset Demonstration. Our proposed action contains more information on the two submittals and our evaluation.

On June 12, 2024, we finalized our proposed action on certain portions of the Coachella Valley Ozone Plan.[6] Specifically, we finalized approval of the reasonably available control measures demonstration, the attainment demonstration, and the State's demonstration that it has satisfied the clean fuels for boilers requirement for the Coachella Valley nonattainment area. Our June 12, 2024, notice stated that we intended to take final action on the remaining VMT Offset Demonstration and RFP demonstration in a future rulemaking. We are finalizing approval of these elements in this notice.

B. Correction

In summarizing the State's photochemical modeling and the associated control measures, the EPA's proposed rule incorrectly stated that the Coachella Valley control strategy for the 1997 ozone NAAQS relies on aggregate emissions reduction commitments from the ''Final 2016 Air Quality Management Plan'' (''2016 AQMP'').[7] While the Coachella Valley Ozone Plan discusses rules addressing the area's progress related to commitments needed for the area to meet the 2008 ozone NAAQS by 2026, the emissions reductions associated with these rules are not reflected in the area's inventory, and the Plan does not rely on the commitments to attain the 1997 ozone NAAQS in 2023.[8]

II. Public Comments and the EPA's Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received comments from Air Law for All (ALFA), dated May 16, 2024. These comments relate to our proposed action on the RFP demonstration. No comments were received on other parts of the proposal. The comments are summarized and addressed below.

[1] 89 FR 26817.

[2] SCAQMD, ''Final Coachella Valley Extreme Area Plan for the 1997 8-Hour Ozone Standard,'' December 2020.

[3] Letter dated December 28, 2020, from Richard W. Corey, Executive Officer, CARB, to John W. Busterud, Regional Administrator, EPA Region 9 (submitted electronically December 29, 2020).

[4] CARB, Staff Report, ''2020 Coachella Valley Vehicle Miles Traveled Emissions Offset Demonstration,'' release date January 22, 2021.

[5] Letter dated March 15, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region 9 (submitted electronically March 18, 2021).

[6] 89 FR 49815.

[7] 89 FR 26817, 26826.

[8] See Coachella Valley Ozone Plan, pp. 4–4 through 4–17.

Comment #1: ALFA criticizes the EPA's proposal to decline to act on the area's contingency measures and new source review (NSR) submittals for the 1997 ozone NAAQS. The commenter argues that the EPA lacks discretion to act on selected portions of submittals when the 18-month statutory deadline for action has passed. The commenter states that CAA section 110(k) does not explicitly grant the EPA authority to act on selected portions of submittals, and argues that when an agency exercises discretion, it must give permissible reasons for doing so. The commenter asserts that the EPA has not given a permissible reason for acting on only portions of the submittal and speculates that the EPA has done so only to delay disapproval of the provisions and avoid starting the associated sanctions and federal implementation plan clocks. The commenter also points out that the EPA noted in the proposal that the State has not yet submitted certain required portions of the plan, and states that EPA has not offered an explanation for not making a finding of failure to submit for those missing portions of the attainment plan.

Response to Comment #1: As a general matter, comments regarding SIP elements not addressed in the proposed rule are outside the scope of this action. The EPA intends to address all required planning elements for the Coachella Valley for the 1997 ozone NAAQS in subsequent actions.[9]

While the EPA has a statutory deadline by which to act on all SIP submittals under CAA section 110(k)(2), the EPA is not obligated to act on all SIP submittals or all SIP elements for a nonattainment area in the same action. The EPA routinely takes separate actions on submittals or portions of submittals that address unique CAA requirements.[10] The EPA strives to meet all statutory deadlines; however, the EPA acknowledges that we are sometimes delayed due to resource limitations and other practical constraints.

With respect to the Coachella Valley contingency measures, the EPA notes that CARB and the SCAQMD previously made a submittal addressing the contingency measures requirement for the 1997 ozone NAAQS that was subsequently withdrawn,[11] and the EPA has no obligation to act on withdrawn submittals. The EPA's current approach for evaluating contingency measures submittals has been shaped by several recent court decisions.[12] In response to these decisions, the EPA has issued the draft guidance cited in our proposed action, titled ''DRAFT: Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter.'' [13] Following our issuance of this draft guidance document, the District and CARB submitted Coachella Valley contingency measures for the 1997 ozone NAAQS to the EPA on April 3, 2024. The EPA notes that the statutory deadline to act on that submittal under CAA section 110(k)(2) has not yet passed.

Comment #2: ALFA comments that the submittal fails to show that the substitute NO_X emissions reductions will ''result in a reduction of ozone concentrations at least equivalent'' to the required 3 percent per annum VOC emissions reductions, and that as a result, the EPA's proposed approval is arbitrary and capricious and contrary to law. The commenter describes the relative roles of VOC and NO_X in ozone formation, including the existence of an ''optimum'' VOC to NO_X ratio for a given level of VOC (*i.e.,* a NO_X concentration at which the maximum amount of ozone is produced). As explained by the commenter, in a ''NO_X saturated'' situation where NO_X levels exceed this optimum ratio, a reduction in NO_X levels can lead to increases in ozone levels, and in a ''NO_X limited'' situation with NO_X levels below the optimum ratio, VOC reductions toward the optimum ratio may have little effect on ozone levels. As a result, the commenter says, ozone response to precursor control can vary greatly between areas. The commenter argues that language in the CAA, including CAA sections 185B, 182(f), and 182(c)(2)(C), indicates that Congress was aware of these issues, including that in some scenarios NO_X reductions may not decrease ozone concentrations.

The commenter also points to the EPA's consideration of the relative effectiveness of NO_X and VOC controls for interpollutant offset trading under the new source review (NSR) permitting program and in applying requirements for major stationary sources of VOC to NO_X sources under CAA 182(f), noting that in these situations EPA guidance indicates that photochemical grid modeling of multiple scenarios should be conducted to support demonstrations related to the relative effectiveness of controls. Through these comparisons, the commenter suggests that the Coachella Valley submittal should have included similar photochemical grid modeling to determine whether the substitute NO_X emissions reductions result in equivalent ozone reductions.

While acknowledging that ozone isopleths, which are graphs of ozone levels resulting from various levels of emissions reductions for each monitoring station, are a technically sound method of comparing the relative benefits of reducing NO_X and VOC emissions, the commenter states that the EPA's overall analysis is insufficient and that there are missing steps in going from isopleths to a justification for the percentage method in the NO_X Substitution Guidance. The commenter states, ''if EPA plans to rely on the isopleths'' as the justification for NO_X substitution, ''EPA must re-propose its action with an explanation that is reasonably detailed enough for the public to be able to comment on it.'' The commenter further states that CAA section 182(c)(2)(C)'s use of the plural ''ozone concentrations'' means that an equivalency demonstration at a single monitoring site would be contrary to the CAA and argues that Congress intended the equivalence requirement to apply throughout the nonattainment area.

Response to Comment #2: We disagree with the commenter's characterization of the District's submittal and the EPA's proposed approval. As described further in this document, the EPA concludes that the analysis included with the modeling and control strategy in the Coachella Valley Ozone Plan adequately demonstrates that plan reductions of VOC and NO_X would result in a reduction in ozone concentrations at least equivalent to that resulting from VOC emissions reductions. This condition is required under CAA 182(c)(2)(C) for substituting NO_X reductions for VOC reductions. We therefore conclude that the District's use of NO_X substitution in the RFP demonstration for the Coachella Valley is appropriate in this circumstance.

[9] For example, in addition to the contingency measures submittal noted previously, the EPA recently received the State's submittal to address the fee requirements of CAA section 185 for the Coachella Valley. Letter from Steven S. Cliff, CARB, to Martha Guzman, EPA, dated August 9, 2024, and submitted electronically on August 13, 2024.

[10] See, *e.g.,* 85 FR 8181 (February 13, 2020), 85 FR 11817 (February 27, 2020) (acting separately on Imperial Valley RACT element and ozone plan, respectively, for the 2008 ozone NAAQS).

[11] Contingency measures were submitted on November 28, 2007, in the SCAQMD ''Final 2007 Air Quality Management Plan,'' transmitted to the EPA in a letter from James N. Goldstene, CARB, to Wayne Nastri, EPA, and withdrawn by the District, in a letter dated April 7, 2020, from Wayne Nastri, SCAQMD to Richard Corey, CARB, and withdrawn by CARB in a letter dated April 28, 2020, from Richard Corey, CARB, to John W. Busterud, EPA.

[12] See esp. *Bahr* v. *EPA,* 836 F.3d 1218 (9th Cir. 2016); *Sierra Club* v. *EPA,* 21 F.4th 815 (D.C. Cir. 2021); *Association of Irritated Residents* v. *EPA,* 10 F.4th 937 (9th Cir. 2021).

[13] 88 FR 17571 (March 23, 2023).

One factor, not discussed in the Coachella Valley Ozone Plan, that contributes to the NO_X-limited conditions is biogenic VOC emissions from vegetation. Biogenic VOC emissions are not required to be reported in nonattainment area inventories. Biogenic emissions are, however, included in the inventory used to model attainment in the Plan, and do contribute to the formation of ozone in the area. The most recent National Emissions Inventory estimates that biogenic VOC emissions represent more than 37 percent of VOC emissions in Riverside County.[14] California's statewide estimate for biogenic VOC emissions represents nearly 43 percent of the total VOC inventory. Biogenic NO_X, in comparison, represent only 3.4 percent of Riverside County NO_X emissions and 7.7 percent of statewide NO_X.[15] Because biogenic VOC is such a large portion of the inventory, reducing anthropogenic VOC emissions represents a smaller reduction in total VOC than a corresponding reduction of anthropogenic NO_X compared to total NO_X reductions.[16] When biogenic emissions are taken into account, the amount of NO_X relative to VOC is smaller, tending to make the ozone chemistry more NO_X-limited. That is, reductions of NO_X are even more effective than VOC reductions at reducing ozone, and appropriate to substitute for VOC reductions to achieve equivalent ozone concentration reductions.

The Coachella Valley Ozone Plan provides ample documentation that the transport of ozone and ozone precursors in the South Coast Air Basin is the primary cause of high ozone concentrations in the Coachella Valley, such as the correlation between the annual number of exceedance days for the two areas.[17] The Plan relies on upwind reductions within the South Coast Air Basin, where NO_X and VOC emissions are respectively more than 20 and nearly 27 times larger than those within Coachella Valley.[18] By the time ozone precursors have been transported to the Coachella Valley, NO_X has been preferentially removed by chemical and physical processes.[19] At the same time, there are fewer NO_X emissions and more biogenic VOC emissions in moving from the more developed Los Angeles urban area to the more rural Coachella area. This leaves less NO_X available to form ozone, creating a NO_X-limited condition where NO_X emissions reductions are more effective than VOC emissions reductions at decreasing ozone concentrations.

The isopleth diagrams in the Coachella Valley Ozone Plan show that NO_X reductions are more effective than VOC reductions at decreasing ozone across a wide range of VOC emissions quantities, which is all that is needed to show that substitution on a 1–1 basis yields a reduction in ozone concentrations at least equivalent to the required VOC reductions.[20] The District generated these diagrams by using photochemical grid modeling to simulate various combinations of NO_X and VOC emissions reductions and then plotting the resulting ozone concentrations for the monitor. Thus, while the commenter suggests that the submittal should have included photochemical modeling, that modeling is the basis of the analysis already provided in the form of the isopleth diagrams. The isopleth diagrams have VOC emissions on the horizontal x-axis and NO_X emissions on the vertical y-axis. Isopleth lines represent the ozone concentration at different levels of VOC and NO_X emissions, and a 45-degree line sloping from upper left to lower right would indicate that NO_X and VOC emissions reductions are equally effective at reducing ozone concentrations.

For the Palm Springs monitor, which is the only monitor in the Coachella Valley exceeding the 1997 ozone NAAQS, the diagram shows nearly horizontal isopleth lines.[21] This indicates a very small ozone response to VOC reductions, so that ozone formation in the Palm Springs area is much more responsive to NO_X emissions reductions than to VOC reductions. The 2016 AQMP's isopleth for Indio-Jackson Street monitor near the center of the nonattainment area shows a similarly flat slope.[22]

In other words, the graphs show that when NO_X emissions are reduced, the level of ozone decreases substantially, and that, in contrast, reducing the level of VOC emissions results in much less reduction in the level of ozone. The curve of the line on the graphs indicates that reductions in NO_X emissions will be considerably more effective than VOC reductions in reducing ozone concentrations on both a mass and percentage basis, and that VOC reductions will achieve only minor reductions in ozone concentrations even under scenarios involving large VOC reductions relative to current levels. Because NO_X reductions are more effective than VOC reductions at reducing ozone concentrations, the Plan's NO_X to VOC substitution ratio of one to one (equivalent on a percentage basis) is a conservative way to determine the amount of NO_X reductions needed to replace VOC emissions reductions and result in at least an equivalent ozone decrease in ozone concentration as required under CAA section 182(c)(2).

In fact, the isopleths show that a given percentage of NO_X reductions provide more of a reduction in ozone concentration than the same percentage of VOC reductions.[23] Thus, the Plan's NOx to VOC substitution ratio of one to one is an appropriate ratio here and the analysis is not missing steps, as the commenter has alleged. As explained, the isopleths for the two Coachella Valley monitoring sites (Indio-Jackson Street and Palm Springs-Fire Station) show that ozone concentrations are more sensitive to reductions in NO_X than reductions in VOC across a wide range of VOC emissions quantities. In addition, the Plan provides multiple lines of evidence to support its statement that ''ozone concentration in Palm Springs is much more sensitive to changes in NO_X emissions than to changes in VOC emissions and indicates that NO_X emission reduction is key for ozone attainment in the Coachella Valley.'' [24] Thus, as the Coachella Valley Ozone Plan's modeling and control strategy demonstrates, NO_X reductions are more effective than VOC reductions in reducing ozone concentration for this

[14] See file titled ''D.1.a. Riverside NO_X & VOC Emissions.xlsx'' in the docket for this rulemaking, which displays information from the EPA's Emissions Inventory Gateway (*https://www.epa.gov/air-emissions-inventories/emissions-inventory-system-eis-gateway*).

[15] Id.

[16] Wildfire emissions are a large source of NO_X emissions and are included the model evaluation but are not factored into the base and future year attainment modeling. Additionally, the influence of wildfire can be excluded from an EPA attainment finding as an exceptional event, in accordance with the EPA's Exceptional Events Rule 81 FR 68216 (October 3, 2016).

[17] Coachella Valley Ozone Plan, p. 2–3, figure 2–3.

[18] 2018 Coachella Valley Ozone Plan, p. 3–6, table 3–3.

[19] The VOC:NO_X ratio increases due to chemical conversion to HNO_3 and due to the process of deposition to surfaces, which removes NO_X (in the form of HNO_3) from the air more quickly than VOC. Barbara J. Finlayson-Pitts and James N. Pitts Jr., 1993, ''Atmospheric Chemistry of Tropospheric Ozone Formation: Scientific and Regulatory Implications,'' Journal of the Air and Waste Management Association, 43:8, 1091–1100, *https://doi.org/10.1080/1073161X.1993.10467187.*

[20] The isopleths include biogenic VOCs in the analysis as constant values, showing changes only to anthropogenic emissions.

[21] Coachella Valley Ozone Plan, p. 5–8, Figure 5–5. See also 89 FR 26817, 26826 (citing isopleth and surrounding discussion).

[22] 2016 AQMP, appendix V, Attachment 5, page 10.

[24] Id.

area based on a one to one substitution ratio, and the underlying requirement in CAA section 182(c)(2)(C) has been met.

The EPA disagrees with the commenter's suggestion that our approval relies on demonstration of equivalence at a ''a single monitoring site'' and is therefore contrary to the CAA. As explained in this notice, this demonstration includes the analysis of isopleth graphs for both the Palm Springs-Fire Station and Indio-Jackson Street monitoring sites, which are the only two monitoring sites in the Coachella Valley nonattainment area. Moreover, the EPA disagrees that CAA section 182(c)(2)(C)'s use of the term ''ozone concentrations'' warrants the narrow interpretation that equivalence must be specifically demonstrated throughout a nonattainment area. As an initial matter, we note that the Act commonly uses the term ''concentrations'' to refer generally to ambient pollution levels at one or more (but not necessarily multiple) monitors or locations.[25] CAA section 182(c)(2)(C) grants the EPA discretion to define the conditions under which NO_X reductions may be substituted for or combined with VOC reductions ''in order to maximize the reduction in ozone air pollution'' and does not further specify the conditions that represent an ''equivalent'' reduction in ozone; for instance, it does not require a specific concentration test at every monitor or at specific locations within an area.[26] No such requirement appears in the Act's other provisions governing the RFP demonstration, which define specific percentage reductions aimed at ensuring timely attainment of the NAAQS,[27] or in the EPA's 1993 NO_X Substitution Guidance, which describes a recommended procedure for states to follow to utilize NO_X substitution.[28] We interpret CAA section 182(c)(2)(C) and these supporting authorities as properly reflecting Congress' intent to allow NO_X reductions to be considered to substitute for the required VOC reductions so long as these reductions are at least as effective in reducing ozone concentrations and consistent with the area's demonstration of timely attainment.[29]

Further, we believe that the commenter's comparison to the EPA's requirements and recommendations for interpollutant trading and exemption from NO_X requirements under CAA 182(f) misunderstands the purpose of and requirements for NO_X substitution under CAA 182(c)(2)(B) relative to these other examples. First, interpollutant trading is no longer allowed for ozone.[30] Second, the guidance documents cited by the commenter for these examples are non-binding and do not constrain the EPA's discretion to adopt a different approach where appropriate.[31] The documents recommend photochemical grid modeling in some scenarios but do not require this approach or any other specific demonstration. This reflects the EPA's acknowledgement that the level of analysis required for any particular demonstration related to NO_X and VOC reductions will differ based on context and local conditions, such as those noted by the commenter regarding the relative effectiveness of controlling each. In the context of CAA 182(c)(2)(C), in an area where isopleths generated through photochemical grid modeling and accompanying analysis indicate that the VOC reductions required under CAA 182(c)(2)(B) will be less effective for reducing ozone concentrations than a corresponding percentage reduction in NO_X emissions, no additional modeling or demonstration is required.

For the reasons described herein, the EPA disagrees that additional justification is needed to show that equal percentage reductions of NO_X emissions can substitute for VOC emissions to meet the CAA requirements for RFP in this context. We find that the District has provided ample evidence to demonstrate that NO_X reductions will be more effective at reducing ozone concentrations in Coachella Valley, and that the photochemical grid modeling conducted for the attainment demonstration, in combination with the supporting analysis accompanying the control strategy and other demonstrations, is sufficient to support the District's use of NO_X substitution.

Comment #3: ALFA faults the EPA's NO_X Substitution Guidance, contending that it recommends a procedure that fails to demonstrate any equivalence between VOC and NO_X reductions, as required by CAA Section 182(c)(2)(C); relies on incorrect policy assumptions; and gives legal justifications that are without merit.

Response to Comment #3: Comments relating solely to the NO_X Substitution Guidance are outside the scope of this rulemaking action. Our proposed approval of the Plan's use of NO_X substitution is consistent with the recommended approach outlined in the NO_X Substitution Guidance, which, while non-binding and not having the force of regulation, provides a recommended procedure for substituting NO_X emissions reductions for VOC reductions on a percentage basis, consistent with a state's ozone attainment plan, control strategy, modeled attainment demonstration, and RFP milestones and requirements. As noted in our response to Comment #2 above, our approval of the District's use of NO_X substitution is supported by local conditions and needs as documented in the modeling and analysis included in the Coachella Valley Ozone Plan and the 2016 AQMP's use of NOx substitution in this RFP demonstration is consistent with the requirements of CAA 182(c)(2)(C) for the reasons described in this notice.

III. The EPA's Action

Pursuant to section 110(k)(3) of the CAA, and for the reasons provided in our April 16, 2024 proposed rule and this final action and response to comments, the EPA is taking final action to approve into the California SIP the RFP demonstration of the ''Final Coachella Valley Extreme Area Plan for the 1997 8-Hour Ozone Standard,'' dated December 2020, as meeting the requirements of CAA sections 172(c)(2) and 182(c)(2)(B), and 40 CFR 51.1105(a)(1) and 51.1100(o)(4).

In addition, the EPA is taking final action to approve CARB's ''2020 Coachella Valley Vehicle Miles Traveled Emissions Offset Demonstration,'' release date January 22, 2021, as meeting the requirements of CAA

[25] E.g., CAA section 107(e)(2); CAA section 110(a)(5)(D).

[26] NO_X Substitution Guidance, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, December 1993, available at *https://archive.epa.gov/ttn/ozone/web/html/index-13.html*.

[27] E.g., CAA 182(b)(1) and (c)(2)(B); see also CAA 171(1) (defining RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date'').

[28] NO_X Substitution Guidance, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, December 1993.

[29] See id. at 8 (quoting H. Rept. No. 490, 101st Cong., 2d Sess. 239 (1990)) (''NO_X reductions may not be substituted for VOC reductions in a manner that delays attainment of the ozone standard or that results in lesser annual reductions in ozone concentration than provided for in the attainment demonstration.'').

[30] See 86 FR 37918, 37923–24 (July 19, 2021).

[31] See EPA, ''Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f)'' (December 16, 1993), 1; Memorandum dated January 14, 2005, from Stephen D. Page, Director, Office of Air Quality Planning and Standards, U.S. EPA, to EPA Regional Air Directors, Regions I–X, Subject: ''Guidance on Limiting Nitrogen Oxides (NO_X) Requirements Related to 8-Hour Ozone Implementation,'' 3; EPA–454/R–18–004, ''Technical Guidance for Demonstration of Inter-Precursor Trading (IPT) for Ozone in the Nonattainment New Source Review Program,'' Office of Air Quality Planning and Standards (May 2018) (''IPT Guidance''), 2. The IPT Guidance specifically excludes applicability to RFP demonstrations. IPT Guidance at 2, n.1.

section 182(d)(1)(A) and 40 CFR 51.1105(a)(1) and 51.1100(o)(10).

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 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 applications 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 the EPA or an Indian tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements Executive Order 12898 and defines EJ as, among other things, ''the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment.''

The State did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. Our June 12, 2024 final action on other elements of the Plan includes additional discussion about how SCAQMD responded to comments related to EJ concerns during development of the Plan.[32] The 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 Executive Orders 12898 and 14096 of achieving EJ for communities with EJ concerns.

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

Under section 307(b)(1) of the 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 March 24, 2025. 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)).

[32] 89 FR 49815, 49816.

List of Subjects in 40 CFR Part 52

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

Dated: January 8, 2025.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the EPA amends Chapter I of Title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(614)(ii)(A)(*2*) and (c)(624) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(614) * * *

(ii) * * *

(A) * * *

(*2*) ''South Coast Air Quality Management District, Final Coachella Valley Extreme Area Plan for the 1997 8-Hour Ozone Standard,'' dated December 2020, the section titled ''Reasonable Further Progress,'' pages 6–1 through 6–7.

* * * * *

(624) The following plan was submitted electronically on March 18, 2021, by the Governor's designee as an attachment to a letter dated March 15, 2021.

(i) [Reserved]

(ii) Additional materials.

(A) California Air Resources Board.

(*1*) California Air Resources Board, Staff Report, ''2020 Coachella Valley Vehicle Miles Traveled Emissions Offset Demonstration,'' Release Date: January 22, 2021.

(*2*) [Reserved]

(B) [Reserved]

[FR Doc. 2025–01110 Filed 1–17–25; 8:45 am]

BILLING CODE 6560–50–P

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Parts 1515 and 1516

[CEQ–2024–0001]

RIN 0331–AA02

Freedom of Information Act and Privacy Act Regulations

AGENCY: Council on Environmental Quality.

ACTION: Final rule.

SUMMARY: The Council on Environmental Quality (CEQ) is finalizing its Freedom of Information Act (FOIA) regulations to incorporate amendments to the FOIA set forth in the FOIA Improvement Act of 2016; to conform to guidance for Federal agencies from the Department of Justice; to make them easier for the public to understand and use; and to better reflect CEQ's current policy and practice. These final regulations reaffirm CEQ's commitment to providing the fullest possible disclosure of records to the public. In addition, CEQ is amending its regulations implementing the Privacy Act of 1974 (the Privacy Act) to make them easier for the public to understand and use and to better reflect CEQ's current policy and practice. These final regulations also make administrative changes, including reorganizing, renumbering, and renaming the sections of CEQ's current FOIA and Privacy Act regulations. CEQ considered all of the public comments received on its proposed rule and made changes in response in this final rule.

DATES: The effective date is February 20, 2025.

ADDRESSES: CEQ established a docket for this action on *www.regulations*.gov, under docket number CEQ–2024–0001. The docket contains all of the public comments that CEQ received on this action.

FOR FURTHER INFORMATION CONTACT: Samuel Roth, Associate General Counsel, 202–395–5750, *Samuel.E.Roth@ceq.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. The FOIA

The FOIA, 5 U.S.C. 552, provides a right of access to certain records that Federal agencies maintain and control. The FOIA directs each Federal agency to publish regulations that describe how the agency will process FOIA requests it receives from members of the public.

CEQ first adopted its FOIA regulations in 1977.[1] In 2010, CEQ amended its regulations to reflect legislative amendments to the FOIA, a 2009 Presidential Memorandum regarding FOIA policy, and additional guidance from the Department of Justice (DOJ) and the Office of Management and Budget (OMB).[2] CEQ's current FOIA regulations are codified at 40 CFR part 1515.

CEQ is revising and republishing its FOIA regulations in their entirety in order to make several improvements to the current rules. First, CEQ is making updates to reflect a number of important changes to the FOIA made by the FOIA Improvement Act of 2016 (Pub. L. 114–185). Section 3(a) of the Act directs each agency to review its FOIA regulations and update them to implement the changes set forth in the Act. Second, CEQ is including a number of provisions to improve the usefulness and readability of its FOIA regulations consistent with DOJ's 2017 revised Template for Agency Regulations (the Template).[3] CEQ modeled this final rule on the Template, which also incorporates the FOIA Improvement Act of 2016's amendments to the FOIA.

Third, CEQ is making updates to better convey the FOIA's and the CEQ regulation's requirements to members of the public who are interested in CEQ's operations and activities, so they can easily understand and use CEQ's FOIA process.[4] Specifically, CEQ referred to the Plain Writing Act of 2010 and the Federal Plain Language Guidelines [5] in preparing the final rule.

Finally, the final rule reflects updates to CEQ's FOIA policies and procedures, as well as the practical experience of CEQ's FOIA staff. As it does under its current regulations, CEQ will administer the FOIA under the final regulations with a presumption of openness, consistent with the Memorandum of the Attorney General dated March 15, 2022.[6]

B. The Privacy Act

The Privacy Act, 5 U.S.C. 552a, governs each Federal agency's collection, maintenance, use, and dissemination of any information about individuals that it maintains in a system of records. The Privacy Act directs each Federal agency to publish regulations that describe the agency's procedures for carrying out the provisions of the Privacy Act. CEQ first adopted its Privacy Act regulations in 1977,[7] codified at 40 CFR part 1516.

CEQ is revising and republishing its Privacy Act regulation in its entirety to make it easier for the public to understand and use and to reflect updates to CEQ's Privacy Act procedures over the past five decades.

II. Discussion of Comments on the Notice of Proposed Rulemaking

On December 11, 2024, CEQ published a notice of proposed rulemaking for public comment.[8] The public comment period concluded on January 10, 2025. Two commenters provided input on the proposal during the public comment period. As noted above, their comments are available on *www.regulations.gov* under docket number CEQ–2024–0001.

Comment 1: One commenter recommended that CEQ explicitly incorporate the ''presumption of openness'' in its FOIA regulations. The presumption of openness, which Congress codified in the FOIA through the FOIA Improvement Act of 2016, directs agencies to withhold information in response to a FOIA request ''only if . . . the agency reasonably foresees that disclosure would harm an interest protected by an exemption [under the FOIA],'' or disclosure is prohibited by law. 5 U.S.C. 552(a)(8)(A). As the Memorandum of the Attorney General dated March 15, 2022, explains, the presumption means that ''[i]nformation that might technically fall within an exemption should not be withheld from a FOIA requester unless the agency can identify a foreseeable harm or legal bar to disclosure.'' [9]

As CEQ noted in the preamble to the proposed rule, CEQ currently administers its FOIA program consistent

[1] CEQ, Freedom of Information Act Procedures; Final Rule, 42 FR 65158 (Dec. 30, 1977).

[2] CEQ, Revision of Freedom of Information Act Regulations, 75 FR 48585 (Sept. 10, 2010).

[3] Template for Agency FOIA Regulations (February 22, 2017), *https://www.justice.gov/oip/template-agency-foia-regulations.*

[4] *See, e.g.,* E.O. 13563, *Improving Regulation and Regulatory Review,* 76 FR 3821 (Jan. 21, 2011) (stating that ''regulations [must be] accessible, consistent, written in plain language, and easy to understand'').

[5] Federal Plain Language Guidelines (1st rev. May 2011), *https://www.plainlanguage.gov/media/FederalPLGuidelines.pdf.*

[6] Department of Justice, *Freedom of Information Act Guidelines* (March 15, 2022), *https://www.justice.gov/media/1212566/dl.*

[7] CEQ, Procedures for Gaining Access to Information Under the Privacy Act of 1974; Final Regulations, 42 FR 32537 (June 27, 1977); *see also* Procedures for Gaining Access to Information Under the Privacy Act of 1974, Correction to Final Regulations, 42 FR 35960 (July 13, 1977) (technical amendment).

[8] CEQ, Freedom of Information Act and Privacy Act Regulations, 89 FR 99799 (Dec. 11, 2024).

[9] Department of Justice, *Freedom of Information Act Guidelines* (Mar. 15, 2022), *https://www.justice.gov/media/1212566/dl.*

with the presumption of openness and will continue to do so under its revised regulations. CEQ has revised the language of § 1515.16(b) to clarify that it applies the presumption of openness in its FOIA program.

Comment 2: One commenter recommended that CEQ revise § 1515.4 to clarify that, when a FOIA requester submits an appeal, a CEQ official other than the one who was responsible for processing the original request will process the appeal. The commenter observed that the Department of Justice's Office of Information Policy, which provides guidance to agencies on FOIA administration, recommends this practice.[10] Consistent with this recommendation, the commenter recommended that CEQ delete the last sentence of § 1515.4(b) (''Otherwise, the Chief FOIA Officer or the Chief FOIA Officer's designee is responsible for processing FOIA appeals.'').

CEQ agrees with the commenter that it is good practice to assign the processing of a FOIA appeal to a different official than the one who was responsible for processing the original FOIA request. CEQ routinely follows this practice in its administration of the FOIA. CEQ is a small agency, however, whose size varies widely from one Presidential Administration to the next. From time to time, it may not be reasonably possible to assign a FOIA appeal to a different official than the one who reviewed the original request, if CEQ lacks sufficient personnel with FOIA expertise. Accordingly, CEQ has inserted a sentence in § 1515.22(b) to explain that, whenever reasonably practicable, CEQ will assign the processing of a FOIA appeal to a different official than the one who was responsible for processing the original request.

Comment 3: One commenter recommended that CEQ modify § 1515.11 and proposed § 1515.20 to change the requirement to include the phrase ''Freedom of Information Act Request'' in the subject line of a request (or ''Freedom of Information Act Appeal'' in the subject line of an appeal, as the case may be) into a recommendation.

CEQ agrees with the commenter that the FOIA statute does not impose this requirement. CEQ regularly receives correspondence, however, that is unclear about whether the sender is making a request for records or seeking some other kind of official action. CEQ has changed the language of §§ 1515.11 and 1515.21 to provide that FOIA requests and appeals must clearly identify themselves as such, and encourage, but do not require them to use the phrase ''Freedom of Information Act Request'' or ''Freedom of Information Act Appeal.''

Comment 4: One commenter recommended that CEQ change § 1515.19(a)(4) to refer to ''records,'' rather than ''information,'' for consistency with the FOIA statute. CEQ has made this change.

III. Summary of the Final Rules

A. Part 1515—Freedom of Information Act Procedures

1. Subpart A—The Council on Environmental Quality's FOIA Program

Section 1515.1—What is the purpose of the rules in this part? This section describes the purpose of part 1515, which is to set forth CEQ's FOIA procedures, and explains the limitations of the regulations.

Section 1515.2—What kind of records does CEQ maintain? This section explains CEQ's activities and legal authorities.

Section 1515.3—Are there any CEQ records that CEQ proactively discloses and for which I do not have to make a request? This section describes CEQ information the public can access without filing a FOIA request. In the final rule, CEQ uses the term ''proactive disclose'' in the title and provision to improve clarity.

Section 1515.4—Who is responsible for processing FOIA requests and appeals to CEQ? This section explains the roles of Chief FOIA Officer and FOIA Appeals Officer at CEQ.

Section 1515.5—Who can help me with my FOIA request to CEQ? This section explains that FOIA requesters can obtain assistance from CEQ's FOIA Public Liaison and dispute resolution services from the National Archives and Records Administration's Office of Government Information Services. In the final rule, CEQ clarifies in § 1515.5(b) that CEQ will actively engage when CEQ agrees to participate in the voluntary dispute resolution services consistent with the Template.

Section 1515.6—What are CEQ's procedures for preserving records? This section explains CEQ's procedures for preserving records in connection with its administration of the FOIA.

2. Subpart B—Making a FOIA Request and Receiving a Response

Section 1515.11—How do I make a FOIA request to CEQ? This section explains how members of the public may request CEQ records under the FOIA. It also describes CEQ's procedures for clarifying requests that do not reasonably describe the records that the requester is seeking.

Section 1515.12—Will CEQ keep my request confidential? This section notes that FOIA requests and the identities of FOIA requesters are generally matters of public record. In the final rule, CEQ adds ''generally'' in the second sentence, for consistency with the third sentence, to account for certain circumstances where CEQ determines it appropriate to withhold a requester's identity.

Section 1515.13—When will CEQ respond to my request? This section describes CEQ's timeline for responding to FOIA requests, including circumstances in which CEQ will extend or pause the ordinary time period for processing FOIA requests. In the final rule, CEQ adds to the explanation of ''unusual circumstances'' in § 1515.13(b)(1) the need to search separate facilities consistent with 5 U.C.C. 552(a)(6)(B)(iii)(I), and adds the term ''aggregate'' for clarity in § 1515.13(b)(2).

Section 1515.14—What if my request is urgent? This section explains how to ask CEQ to expedite its processing of a FOIA request or appeal.

Section 1515.15—How will CEQ process my request? This section describes CEQ's procedures for processing requests and circumstances in which CEQ will deny requests. In the final rule, in § 1515.13(b)(3), CEQ changes ''will include'' to ''may include'' before ''CEQ's estimate of the date on which we will respond to your request.'' CEQ makes this change because FOIA does not require CEQ to provide such a date, but CEQ considers it a best practice to provide an estimate when it is able to do so.

Section 1515.16—How does CEQ determine when to withhold records or portions of a record? This section describes CEQ's procedures for applying the statutory exemptions from disclosure set forth in the FOIA.

Section 1515.17—What if I request records that involve another Government office or agency? This section describes CEQ's procedures for consulting with other Federal agencies regarding whether to disclose or withhold particular records in response to a FOIA request, as well as CEQ's procedures for referring records to another agency for processing.

Section 1515.18—What happens if CEQ grants my request in full or in part? This section describes CEQ's procedure for disclosing records in response to a FOIA request.

[10] Department of Justice, OIP Guidance: Adjudicating Administrative Appeals Under the FOIA (Aug. 12, 2021), *https://www.justice.gov/oip/oip-guidance/Adjudicating%20Administrative%20Appeals%20Under%20the%20FOIA.*

Section 1515.19—What happens if CEQ denies my request in full or in part? This section describes CEQ's procedure for withholding records in response to a FOIA request.

3. Subpart C—Appealing a FOIA Request

In the final rule, CEQ revised the numbering from the proposed rule to start with § 1515.21 instead of § 1515.20.

Section 1515.21—Can I appeal CEQ's response to my request? This section describes how a FOIA requester may appeal a determination that CEQ made in processing the requester's request.

Section 1515.22—How will CEQ process my appeal? This section describes CEQ's procedures for upholding, reversing, or modifying a prior determination on appeal. In the final rule, CEQ adds paragraph (e), to clarify that ordinarily, it will not adjudicate an appeal if the request becomes the subject of litigation.

4. Subpart D—Fees for FOIA Requests and Appeals

Section 1515.31—Can CEQ charge fees for processing FOIA requests and appeals? This section explains that CEQ charges fees for processing FOIA requests, but not appeals, and describes the rules that CEQ will follow in determining whether to charge a fee and the amount of the fee. As in CEQ's current FOIA regulation, the provisions of this section and the subsequent sections reflect OMB's Uniform Freedom of Information Act Fee Schedule and Guidelines.

Section 1515.32—What is the amount of the fee for processing a request? This section describes how CEQ will determine the amount of the fee for processing a FOIA request.

Section 1515.33—Are there any exceptions for special requesters? This section describes the services that CEQ will exclude from the calculation of fees for non-commercial requesters, in general, and for representatives of non-commercial scientific institutions, educational institutions, and the news media, in particular.

Section 1515.34—Can I apply for a fee waiver? This section describes the availability of fee waivers and explains the criteria CEQ will apply in determining whether to grant a fee waiver.

Section 1515.35—When will CEQ contact me about fee-related matters? This section describes CEQ's procedures for contacting FOIA requesters to resolve fee-related matters.

Section 1515.36—Do I have to pay fees if CEQ misses the deadline for responding to my request? This section describes the circumstances in which CEQ will not charge fees for processing a FOIA request because CEQ did not respond to the request within the time period set forth in the FOIA.

Section 1515.37—When are fees due and how do I pay them? This section describes when and how FOIA requesters must pay fees to CEQ, including the circumstances in which CEQ may require a FOIA requester to pay fees in advance.

Section 1515.38—What will CEQ do if I do not promptly pay the fee? This section explains when CEQ will charge interest and use debt collection procedures.

5. Subpart E—Confidential Commercial Information and Preservation of Records

Section 1515.41—How does CEQ handle confidential commercial information? This section implements the requirements of Executive Order (E.O.) 12600, *Predisclosure Notification Procedures for Confidential Commercial Information,*[11] which directs Federal agencies to allow submitters of information to designate records that contain confidential commercial information and to notify submitters when a FOIA requester seeks disclosure of confidential commercial information.

B. Part 1516—Privacy Act Implementation

Section 1516.1—What is the purpose of this part? This section describes the purpose of part 1516, which is to set forth CEQ's Privacy Act procedures.

Section 1516.2—What records does this part cover? This section explains when part 1516 applies and explains the meaning of ''record'' and ''system of records'' for purposes of part 1516.

Section 1516.3—When will CEQ disclose records about me? This section describes the conditions under which CEQ will disclose records, which are (1) in response to an individual's request for the individual's own records; (2) as part of a routine use of records; or (3) pursuant to one of the other bases for disclosure that appear in section 3 of the Privacy Act, 5 U.S.C. 552a(b).

Section 1516.4—How can I obtain access to CEQ's records about me? This section describes the procedures for an individual to request access to the individual's own records.

Section 1516.5—How can I obtain information about how CEQ has used its records about me? This section describes the procedures for an individual to request an accounting of disclosures of the individual's own records.

Section 1516.6—How can I ask CEQ to correct my records? This section describes the procedures for an individual to request an amendment of the individual's own records and explains how CEQ will review such a request.

Section 1516.7—How can I appeal CEQ's decision to deny my request to access or correct records about me? This section describes the procedures for an individual to appeal CEQ's denial of the individual's request to amend the individual's own records.

Section 1516.8—Will CEQ charge me a fee for a copy of my records? This section describes the fees CEQ will charge for copies of records.

IV. Regulatory Analysis and Notices

A. Regulatory Flexibility Act and Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking

The Regulatory Flexibility Act (RFA), as amended, 5 U.S.C. 601 *et seq.,* and E.O. 13272, *Proper Consideration of Small Entities in Agency Rulemaking,*[12] require agencies to assess the impacts of proposed and final rules on small entities. Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that the rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The FOIA authorizes Federal agencies to charge fees only to certain requesters, and only in order to recover the direct costs of searching for, reviewing, and duplicating agency records. Under the final rule, CEQ will continue to charge fees in accordance with the FOIA and guidelines from DOJ and OMB. The Privacy Act authorizes Federal agencies to charge fees only to individuals, and accordingly CEQ will not charge fees under the Privacy Act to small entities within the meaning of the RFA.

The fees that CEQ assesses for processing FOIA requests are nominal and will not have a significant impact on a substantial number of small entities within the meaning of the RFA. Accordingly, CEQ hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities.

B. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L.

[11] 52 FR 23781 (June 25, 1987).

[12] 67 FR 53461 (Aug. 16, 2002).

104–4, 2 U.S.C. 1531), requires Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments, and the private sector to the extent that such regulations incorporate requirements specifically set forth in law. Before promulgating a rule that may result in the expenditure by a State, Tribal, or local government, in the aggregate, or by the private sector of $100 million, adjusted annually for inflation, in any 1 year, an agency must prepare a written statement that assesses the effects on State, Tribal, and local governments and the private sector. 2 U.S.C. 1532. This final rule will apply only to requesters under the FOIA or the Privacy Act and will not result in expenditures of $100 million or more for State, Tribal, and local governments, in the aggregate, or the private sector in any 1 year. This final action also will not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of 2 U.S.C. 1531–1538.

C. Executive Order 12866, Regulatory Planning and Review

E.O. 12866, as supplemented and affirmed by E.O. 13563 and amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs will review any regulatory action that qualifies as a ''significant regulatory action'' within the meaning of the E.O.[13] The final rule does not qualify as a significant regulatory action.

D. Executive Order 12988, Civil Justice Reform

Under section 3(a) of E.O. 12988,[14] agencies must review their proposed regulations to eliminate drafting errors and ambiguities, draft them to minimize litigation, and provide a clear legal standard for affected conduct. Section 3(b) provides a list of specific matters that agencies must consider when conducting the review required by section 3(a). CEQ has conducted this review and determined that this final rule complies with the requirements of E.O. 12988.

E. Paperwork Reduction Act

This final rule will not impose any new information collection burden that will require additional review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

F. National Environmental Policy Act (NEPA)

The National Environmental Policy Act of 1969 (NEPA) (Pub. L. 118–5, 42 U.S.C. 4321 *et seq.*), as amended, and the CEQ regulations that implement NEPA, 40 CFR parts 1500 through 1508, require consideration of the environmental effects of proposed actions in agency decision making. NEPA provides for three levels of review. First, agencies may establish in their agency-specific NEPA procedures categorical exclusions (CEs) for categories of actions that normally do not have a significant effect on the human environment, individually or in the aggregate, and apply CEs to individual actions, as appropriate.[15] If an agency proposes to take an action that does not fall within a CE but is not likely to have significant environmental effects (or the significance of whose effects is unknown), CEQ's NEPA regulations direct the agency to prepare an environmental assessment (EA).[16] If, as a result of this assessment, the agency determines that the proposed action will not have significant effects, the agency may make a finding of no significant impact (FONSI), in which case the agency may proceed with the action.[17] Otherwise, the agency must prepare an environmental impact statement (EIS).[18]

CEQ has not established a CE for the dissemination of information under the FOIA; the disclosure of records under the Privacy Act; or the preparation, revision, and adoption of regulations generally. Accordingly, CEQ prepared an EA to determine whether the revisions to CEQ's FOIA and Privacy Act regulations would have a significant effect on the human environment. Because, as set forth below, the final regulations will likely result in a small reduction in the use of resources in CEQ's administration of the FOIA and the Privacy Act, CEQ finds that the final rule will have no significant impact on the human environment and that it is therefore unnecessary to prepare an EIS.

1. Environmental Assessment

Purpose and Need: As set forth in the proposed rule and the above Summary of the Final Rule, CEQ adopted its FOIA regulations in 1977 and has not updated them to reflect developments in FOIA law, policy, and practice since 2010. As such, the current regulations fail to reflect current FOIA requirements, including those set forth in the FOIA Improvement Act of 2016. Furthermore, CEQ's current FOIA regulations do not conform in all points to the Template and the directions in the Plain Writing Act of 2010, and do not fully reflect CEQ's current policy and practice with respect to the FOIA. Likewise, CEQ adopted its Privacy Act regulations in 1977, and has not updated them since that time to reflect updates to CEQ's Privacy Act procedures.

Proposed Action and Alternatives: A summary of the final action, which is one of two action alternatives analyzed in this EA, is set forth in the NPRM and in the above Summary of the Final Rule. Under a no action alternative, CEQ would continue to operate under its current regulations, addressing inconsistencies between the regulations and current law and agency procedure on a case-by-case basis. CEQ has decided that this approach is undesirable because it is confusing to the public and requires CEQ staff to address inconsistencies between the regulation, the law, and agency procedure that CEQ can obviate by updating the regulation.

CEQ considered another action alternative of making only narrowly tailored amendments to its current FOIA regulations in order to implement the FOIA Improvement Act of 2016. While this alternative would eliminate direct inconsistencies between CEQ's regulations and the FOIA, it would not address inconsistencies between CEQ's FOIA regulations, the Template and CEQ's FOIA policies and procedures, or inconsistencies between CEQ's Privacy Act regulations and CEQ's practice in implementing the Privacy Act.

CEQ's preferred alternative is to amend its regulations as described in the proposed rule and this final rule, for the reasons set forth in parts I through III of this preamble.

Environmental Effects of Alternatives: CEQ's FOIA and Privacy Act programs affect the environment primarily through requesters' use of paper and energy in submitting requests and CEQ's use of paper and energy in searching for, reviewing, and duplicating responsive records. CEQ's use of paper and energy for these purposes has remained within the range typical of the operations of a small office. Currently, CEQ accepts FOIA and Privacy Act requests by mail and fax, which require the use of paper and energy to print and transmit requests to CEQ. The final regulations will direct FOIA and Privacy Act requesters to submit their requests electronically if they are able to do so, thereby reducing the use of paper and

[13] *See* E.O. 12866, *Regulatory Planning and Review,* 58 FR 51735, 51737 (Oct. 4, 1993); E.O. 14094, *Modernizing Regulatory Review,* 88 FR 21879, 21879–80 (Apr. 11, 2023); E.O. 13563, *Improving Regulation and Regulatory Review,* 76 FR 3821, 3822 (Jan. 21, 2011).

[14] 61 FR 4729 (Feb. 7, 1996).

[15] 40 CFR 1501.4(a).

[16] *Id.* § 1501.5(a).

[17] *Id.* § 1501.6.

[18] 40 CFR part 1502.

energy associated with mailed and faxed requests. CEQ receives requests by fax or mail infrequently, however, so any reduction in the use of resources is likely to be modest. In addition, by improving the public's timely access to information contained in CEQ records, the final regulations support the meaningful involvement of all communities, including communities with environmental justice concerns, in Federal decision-making processes.

List of Agencies and Persons Consulted: CEQ's NEPA staff reviewed and commented on this EA, the proposed rule, and this final rule.

2. Finding of No Significant Impact

Based on the foregoing EA, CEQ finds that implementation of the final regulations will reduce the use of paper and energy resources in CEQ's FOIA and Privacy Act programs, streamline CEQ's FOIA and Privacy Act procedures, make CEQ more accessible and responsive to the public, and improve the opportunity for all communities to access information and be meaningfully involved in Federal decision-making processes. Thus, there will be no significant environmental effects associated with implementation of the proposed action, and it is not necessary for CEQ to prepare an EIS.

CEQ further finds that the final action is not one that normally requires the preparation of an EIS, closely similar to such an action, or an action without precedent.

List of Subjects

40 CFR Part 1515

Administrative practice and procedures, Courts, Freedom of information, Government employees, Records.

40 CFR Part 1516

Administrative practice and procedures, Courts, Government employees, Privacy, Records.

Amy B. Coyle,

Principal Deputy General Counsel.

■ For the reasons discussed in the preamble, the Council on Environmental Quality revises and republishes 40 CFR parts 1515 and 1516 to read as follows:

PART 1515—FREEDOM OF INFORMATION ACT PROCEDURES

Subpart A—The Council on Environmental Quality's FOIA Program

Sec.
1515.1 What is the purpose of the rules in this part?
1515.2 What kind of records does CEQ maintain?
1515.3 Are there any CEQ records that CEQ proactively discloses and for which I do not have to make a request?
1515.4 Who is responsible for processing FOIA requests and appeals to CEQ?
1515.5 Who can help me with my FOIA request to CEQ?
1515.6 What are CEQ's procedures for preserving records?

Subpart B—Making a FOIA Request and Receiving a Response

Sec.
1515.11 How do I make a FOIA request to CEQ?
1515.12 Will CEQ keep my request confidential?
1515.13 When will CEQ respond to my request?
1515.14 What if my request is urgent?
1515.15 How will CEQ process my request?
1515.16 How does CEQ determine when to withhold records or portions of a record?
1515.17 What if I request records that involve another Government office or agency?
1515.18 What happens if CEQ grants my request in full or in part?
1515.19 What happens if CEQ denies my request in full or in part?

Subpart C—Appealing a FOIA Request

Sec.
1515.21 Can I appeal CEQ's response to my request?
1515.22 How will CEQ process my appeal?

Subpart D—Fees for FOIA Requests and Appeals

Sec.
1515.31 Can CEQ charge fees for processing FOIA requests and appeals?
1515.32 What is the amount of the fee for processing a request?
1515.33 Are there any exceptions for special requesters?
1515.34 Can I apply for a fee waiver?
1515.35 When will CEQ contact me about fee-related matters?
1515.36 Do I have to pay fees if CEQ misses the deadline for responding to my request?
1515.37 When are fees due and how do I pay them?
1515.38 What will CEQ do if I do not promptly pay the fee?

Subpart E—Confidential Commercial Information and Preservation of Records

Sec.
1515.41 How does CEQ handle confidential commercial information?

Authority: 5 U.S.C. 552; E.O. 13392, 70 FR 75373, 3 CFR, 2005 Comp., p. 216; Pres. Mem., 74 FR 4685, 3 CFR, 2009 Comp., p. 338.

Section 1515.41 also issued under E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Subpart A—The Council on Environmental Quality's FOIA Program

§ 1515.1 What is the purpose of the rules in this part?

(a) This part explains how you, a member of the public, may request copies of records from the Council on Environmental Quality (CEQ) under the Freedom of Information Act (FOIA). You can find the text of the FOIA at 5 U.S.C. 552.

(b) Nothing in this part entitles you to any service or to the disclosure of any record to which you are not entitled under the FOIA.

§ 1515.2 What kind of records does CEQ maintain?

CEQ carries out responsibilities under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347); the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371–4375); Reorganization Plan No. 1 of 1977 (July 15, 1977); and various Executive orders, among other authorities. CEQ maintains certain records on these subjects, among others.

§ 1515.3 Are there any CEQ records that CEQ proactively discloses and for which I do not have to make a request?

Yes. The FOIA requires CEQ to proactively disclose—that is, to make certain records available for public inspection online—records that have been or are likely to become the subject of repeated requests. You can find those records, together with an index, at *https://www.whitehouse.gov/ceq/foia/.*

§ 1515.4 Who is responsible for processing FOIA requests and appeals to CEQ?

(a) CEQ's Chief FOIA Officer oversees the administration of requests made to CEQ under the FOIA. The Chief FOIA Officer, or the Chief FOIA Officer's designee, is responsible for processing and granting or denying FOIA requests. The Chair of CEQ appoints the Chief FOIA Officer.

(b) The Chief FOIA Officer may appoint a FOIA Appeals Officer. If the Chief FOIA Officer does so, the FOIA Appeals Officer or the FOIA Appeals Officer's designee is responsible for processing and granting or denying FOIA appeals. Otherwise, the Chief FOIA Officer or the Chief FOIA Officer's designee is responsible for processing FOIA appeals.

§ 1515.5 Who can help me with my FOIA request to CEQ?

(a) You may contact CEQ's FOIA Public Liaison for assistance with your FOIA request, including help in formulating your request and

information about the status of your request, or to submit concerns about CEQ's handling of your request. You can contact CEQ's FOIA Public Liaison by email at *efoia@ceq.eop.gov* or by phone at 202–395–5750. For additional contact information, visit *https://www.foia.gov* and choose ''Council on Environmental Quality'' in the index of Government agencies.

(b) If you have a dispute with CEQ over its handling of your FOIA request, you may contact the National Archives and Records Administration's Office of Government Information Services for assistance or dispute resolution services by calling (202) 741–5770 or visiting *https://archives.gov/ogis.* If CEQ agrees to participate in the voluntary dispute resolution services provided by the Office of Government Information Services, CEQ will actively engage as a partner to the process in an attempt to resolve the dispute.

(c) If you are an individual with a disability, CEQ will provide you with access to and use of information and data through its FOIA program that is comparable to the access to and use of the information and data by members of the public who are not individuals with disabilities, unless doing so would impose an undue burden on CEQ.

(d) If your proficiency in English is limited, CEQ will take steps as appropriate to provide you with meaningful access to CEQ's FOIA program.

§ 1515.6 What are CEQ's procedures for preserving records?

(a) CEQ preserves records pursuant to title 44 of the United States Code and the Records Schedules issued by the Archivist of the United States.

(b) CEQ will not dispose of or destroy agency records that are the subject of a pending request, appeal, or lawsuit under the FOIA.

Subpart B—Making a FOIA Request and Receiving a Response

§ 1515.11 How do I make a FOIA request to CEQ?

(a) You must make your request by email to *efoia@ceq.eop.gov* or by completing the request form at *https://www.foia.gov.* If you are not able to make your request by either of these methods, please contact CEQ's FOIA Public Liaison for assistance.

(b) When making a request to CEQ, you must:

(1) Clearly indicate that you are making a request for records, such as by including ''Freedom of Information Act Request'' in the subject line if you are submitting your request by email. If your email includes attachments, you must enter your request in the body of the email in addition to the attachment.

(2) Identify or reasonably describe the records you are requesting in sufficient detail to enable CEQ personnel to locate them with a reasonable amount of effort. Make your request as specific as you can. If possible, include the date (or a range of dates), title or name, author, recipient, subject matter, case number, file designation, or reference number for the records you seek.

(3) Explain if you need CEQ to provide the records in a particular form or format. CEQ ordinarily provides records in Portable Document Format (PDF), but CEQ will provide its response in the format you request if it is reasonably practicable to do so.

(4) Provide your contact information, such as your phone number, your email address, or both, so that CEQ is able to contact you, as necessary, regarding the status of your request and to clarify matters related to your request.

(5) Indicate the maximum amount you are willing to pay in fees, as described in subpart E of this part. If you are requesting a fee waiver as part of your initial request, include the statement described at § 1515.34(a).

(6) If applicable, include a signed letter on your institution's official letterhead, stating that you believe you qualify for a reduction of fees, as described in § 1515.33, because you are a representative of a non-commercial scientific institution, a representative of an educational institution, or a member of the news media.

(c) If you are requesting information that is subject to the Privacy Act of 1974 (*i.e.,* records about you that CEQ maintains in a system of records), you must follow the procedures under part 1516 of this chapter, instead of the procedures in this part.

(d) If you are requesting copies of ethics-related documents that CEQ makes available pursuant to section 105 of the Ethics in Government Act of 1978 (such as CEQ employees' public financial disclosure reports), you must follow the procedures at 5 CFR 2634.603, instead of the procedures in this part. For more information, visit the U.S. Office of Government Ethics website at *https://www.oge.gov.*

(e) If CEQ determines that your request does not reasonably describe the records you are seeking, such that CEQ would not be able to locate the records you have requested with a reasonable amount of effort, CEQ will notify you and explain what additional information you need to provide regarding the records that you seek.

(1) For example, if you request all records related to a broad subject or all communications between CEQ and a third party, we will generally ask you to clarify the scope of your request.

(2) Furthermore, your request must seek existing records of CEQ; we will not create new records or compile new information in order to respond to a FOIA request.

(3) If you have not provided a way to contact you, or you do not respond to our inquiry within 30 working days (*i.e.,* excepting Saturdays, Sundays, and Federal holidays), CEQ will administratively close your request. If possible, we will notify you of the closure.

§ 1515.12 Will CEQ keep my request confidential?

No. CEQ generally will not keep your request confidential. A FOIA request, including the requester's identity, is generally a matter of public record. CEQ publishes logs of requests and requesters at *https://www.whitehouse.gov/ceq/foia/.*

§ 1515.13 When will CEQ respond to my request?

(a) CEQ's Chief FOIA Officer or the Chief FOIA Officer's designee will make an initial determination of how CEQ will respond to your request within 20 working days from the date that CEQ received your request, except as provided in this section.

(b) If CEQ is unable to make a determination within the 20-day period because of ''unusual circumstances,'' we may extend the period of time in which we will respond to your request.

(1) ''Unusual circumstances'' exist when, in order to properly process your request, CEQ must search for, collect, and appropriately examine a voluminous amount of separate and distinct records, CEQ must consult with another agency or another component of the Executive Office of the President, or CEQ must search at separate facilities.

(2) In determining whether ''unusual circumstances'' are present, CEQ may aggregate and treat multiple requests on clearly related matters from you (or from other persons acting in concert with you) as a single request.

(3) Before the conclusion of the 20-day period, CEQ will notify you of the ''unusual circumstances'' that apply and the date by which we estimate we will complete processing your request.

(4) When the extension will exceed 10 working days, CEQ will provide you the opportunity to modify the request or arrange an alternative time period for processing the original or modified request.

(c) If CEQ reasonably requires additional information from you to clarify your request or to resolve fee-related matters, we may toll (*i.e.,* pause) the 20-day period, or any extension of that period, from the date we request information from you until the date you respond. We will only toll the response period one time for the purpose of clarifying your request, but we may toll the response period more than once to resolve fee-related matters.

§ 1515.14 What if my request is urgent?

(a) You may ask CEQ to expedite the processing of your FOIA request or appeal. If CEQ agrees to expedite processing of your request or appeal, we will process it with priority over non-expedited requests and appeals and respond to you as quickly as possible.

(b) CEQ will expedite requests or appeals if:

(1) Failing to expedite the request or appeal could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) You are primarily engaged in disseminating information (*e.g.,* you are a member of the news media), and you have an urgent need to inform the public about an actual or alleged Federal Government activity, beyond the public's right to know about Government activity generally.

(c) You may ask for expedited processing when you make your initial request or appeal, or at any later time.

(d) In order to ask for expedited processing, you must submit a statement, certified to be true and correct, that explains in detail why your request or appeal satisfies the requirements of paragraph (b)(1) or (2) of this section. If you believe that you have an urgent need to inform the public about an actual or alleged Federal Government activity, you should provide examples of other coverage of the same or related subjects, if possible. CEQ may waive the formal certification requirement at its discretion.

(e) CEQ will notify you within 10 calendar days whether we will grant or deny you expedited processing.

(f) If CEQ denies you expedited processing, you may appeal that determination using the procedures in subpart C of this part. We will process your appeal as promptly as we can.

§ 1515.15 How will CEQ process my request?

(a) If your request does not reasonably describe the records you seek; the information you have requested is not a record subject to FOIA; CEQ has already published the information you are requesting; or your request does not follow the procedures described in the regulations in this part, we will deny your request in accordance with § 1515.19.

(b) If your request reasonably describes the records you seek and otherwise comports with the procedures described in this part, CEQ will process your request as follows:

(1) CEQ will acknowledge your request in writing and assign it an individualized tracking number. The written acknowledgment may include CEQ's estimate of the date on which we will respond to your request.

(2) CEQ will search for agency records that respond to your request. CEQ ordinarily will search records in our possession as of the date that we begin our search. We will notify you if we use a different date.

(3) If CEQ finds records that you have requested, we will determine whether to grant your request (*i.e.,* provide you with the records you have requested) or to deny it (*i.e.,* withhold the relevant records from disclosure in accordance with § 1515.16).

(4) Once CEQ has determined whether to grant your request in full, grant it in part and deny it in part, or deny it in full, we will notify you of our determination in writing.

(c) If CEQ determines that it has a voluminous amount of records responsive to your request, or if your request requires CEQ to search for records in multiple locations (electronic or physical), CEQ may provide you with one or more interim responses, releasing responsive records to you on a rolling basis.

§ 1515.16 How does CEQ determine when to withhold records or portions of a record?

(a) If CEQ finds records that are responsive to your request, we will review the records to determine whether to withhold any of the records or portions of individual records.

(b) The FOIA identifies nine exemptions to the requirement that agencies provide agency records upon request. CEQ will only withhold a record or a portion of a record under one of these exemption to the FOIA if CEQ reasonably foresees that disclosing it would harm an interest that the exemption protects. In determining the interests at stake in disclosing or withholding CEQ records, we bear in mind that Congress, in creating CEQ, intended for the CEQ Chair to serve as a confidential advisor to the President and the President's immediate advisors on matters of environmental policy.

(c) CEQ will also withhold a record, or a portion of a record, if disclosing it would violate another provision of the FOIA or a law other than the FOIA.

(d) If the record concerns another government agency, CEQ generally will involve the other agency in determining whether to withhold the record or portions of the record, using the procedures at § 1515.17.

§ 1515.17 What if I request records that involve another Government office or agency?

(a) If CEQ determines that any of the CEQ records you have requested involve another agency in the Federal Government, including another component of the Executive Office of the President, we generally will involve the other agency in reviewing that record in either of two ways.

(1) CEQ may consult with the other agency regarding the record to obtain the other agency's views on whether the record or portions of the record are exempt from disclosure under the FOIA. We will take the other agency's views into consideration when making a final determination of whether to withhold the record or any portions of the record.

(2) CEQ may refer the record to the other agency, in which case the other agency will determine whether the record or portions of the record are exempt from disclosure under the FOIA, and will respond directly to you regarding your request for the record. If CEQ determines to refer records you have requested to another agency, we will notify you of the referral and explain how to contact the other agency's FOIA officials.

(b) CEQ will choose between consulting with another agency about a record and referring the record to the other agency according to the following principles:

(1) Ordinarily, CEQ will use consultation procedures for records that originated with CEQ but that contain information of interest to another agency or office, and CEQ will refer records that originated with another agency to that agency.

(2) CEQ will typically refer a classified record (or a portion of a record) or a record that may be appropriate for classification to the agency that either classified the information or should consider the information for classification.

(c) CEQ may make agreements with other agencies about how CEQ will handle records involving that agency or how that agency will handle records involving CEQ. Any agreement we make will comply with the FOIA and this part.

§ 1515.18 What happens if CEQ grants my request in full or in part?

Once you have paid the fees that are due under subpart E of this part (if any), CEQ will promptly provide you with a copy of the records you requested, except for the records or portions of records we have determined to withhold under § 1515.16. We will follow the procedures in § 1515.19 with respect to those records or portions of records.

§ 1515.19 What happens if CEQ denies my request in full or in part?

(a) CEQ may deny your request in full or in part for these reasons, among others:

(1) CEQ determines to withhold all or a portion of the records you requested under § 1515.16;

(2) Your request does not reasonably describe the records you seek;

(3) The information you requested is not a record subject to the FOIA;

(4) CEQ has already published the records you are requesting;

(5) The records you requested do not exist, cannot be located, or have been destroyed;

(6) The records you requested are not readily reproducible in the form or format you seek; or

(7) Your request does not comport with the procedures set forth in this part.

(b) If CEQ denies your request regarding expedited processing or fee-related matters, we will also treat that as a denial of your request in part and follow the procedures in this section.

(c) If CEQ determines to deny your request in full or in part, we will notify you of the basis for the denial. The notification will include the following information:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption CEQ applied in determining to withhold records (or portions thereof) under § 1515.16;

(3) An estimate of the volume of the records CEQ is withholding, unless the volume is indicated by markings we have made on the records we are providing;

(4) A statement that you may appeal the denial to CEQ, under subpart C of this part, and an explanation of what you must do to appeal; and

(5) A reminder that you can obtain assistance from CEQ's FOIA Public Liaison and dispute resolution services from the National Archives and Records Administration's Office of Government Information Services.

(d) For each record CEQ discloses in part, we will mark the record clearly to show which portions we are withholding and the FOIA exemptions we applied in determining to withhold those portions, unless doing so would harm an interest protected by an applicable FOIA exemption. If technically feasible, we will mark the record to indicate the location of the portions we are withholding.

Subpart C—Appealing a FOIA Request

§ 1515.21 Can I appeal CEQ's response to my request?

(a) Yes. You may appeal CEQ's response if you disagree with any determination that CEQ made in responding to your request, including CEQ's determination to deny your request in whole or in part, CEQ's determination to deny you expedited processing, CEQ's determination of how to conduct the search for records, and fee-related determinations.

(b) CEQ must receive your appeal within 90 calendar days of the date on which CEQ notified you of the relevant determination in writing.

(c) You must make your appeal by email to *efoia@ceq.eop.gov.* If you are not able to make your appeal by email, please contact CEQ's FOIA Public Liaison for assistance.

(1) Clearly indicate that you are making an appeal, such as by including ''Freedom of Information Act Appeal'' in the subject line. If your email includes attachments, you also must explain your request in the body of the email, in addition to the attachment.

(2) If you are not able to make your appeal by email, please contact CEQ's FOIA Public Liaison for assistance.

(d) Your appeal must include your request's individualized tracking number and must identify the specific CEQ determinations you are appealing.

(e) If you fail to properly appeal a determination that CEQ made in processing your request, you may lose your right to challenge that determination in Federal court.

§ 1515.22 How will CEQ process my appeal?

(a) CEQ will review the determinations you have appealed and determine if they are consistent with applicable law and policy. CEQ will conduct this review *de novo,* which means that CEQ will not presume that its prior determinations were correct. Whenever reasonably possible, CEQ will assign your appeal to a different official than the one who was responsible for processing your original request.

(b) CEQ will respond to your appeal within 20 working days from the date that CEQ received your appeal.

(c) If CEQ determines to uphold a determination that you have appealed, CEQ's response will:

(1) Include a statement that identifies our reasons for affirming the decision, including any FOIA exemption CEQ applied in determining to affirm our determination to withhold a record or a portion of a record; and

(2) Explain how to challenge our determination by filing a lawsuit in Federal court and how to seek dispute resolution services from the National Archives and Records Administration's Office of Government Information Services.

(d) If CEQ determines to reverse or modify a determination that you have appealed, we will reprocess your request in accordance with the reversed or modified determination, using the procedures set forth at § 1515.15.

(e) CEQ ordinarily will not adjudicate an appeal if the appealed request becomes the subject of litigation.

Subpart D—Fees for FOIA Requests and Appeals

§ 1515.31 Can CEQ charge fees for processing FOIA requests and appeals?

(a) Yes. CEQ may charge fees for processing your FOIA request.

(b) CEQ will determine whether to charge a fee and the amount of the fee by using the rules in this subpart and the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedule and Guidelines, as amended.[1]

(c) CEQ will not charge fees for deciding whether to grant or deny your appeal. If CEQ grants your appeal, we will charge fees for any additional searching, reviewing, or duplication that we carry out as a result of your appeal. For instance, if you appeal our determination of how to conduct the search for records, and we grant your appeal, we will conduct a new search in the manner you requested and will charge you fees accordingly.

§ 1515.32 What is the amount of the fee for processing a request?

(a) CEQ will charge fees equal to:

(1) The basic hourly rate of pay for each employee who participates in searching for records, reviewing records, or duplicating records (including contract employees), multiplied by the total number of hours that the employee worked on your request (rounded to the nearest quarter of an hour), plus 16 percent (to account for employee benefits); plus

(2) The total direct costs that CEQ incurs in searching for, reviewing, or

[1] 52 FR 10016 (Mar. 27, 1987).

duplicating records, such as the cost of operating computers and other electronic equipment, but excluding overhead expenses such as the cost of office space, heating, and lighting; plus

(3) An additional fee equal to the total direct costs of any additional services that you and CEQ agree upon, such as providing multiple copies of a record.

(b) In determining the fee under paragraph (a) of this section, CEQ will use the following guidelines:

(1) ''Searching for records'' is the process of looking for and retrieving the records you requested (including by electronic search) and determining whether individual records contain the information that you seek. CEQ will charge fees for searching for records even if we do not locate any records that respond to your request, or even if we determine not to disclose any of the records that we locate.

(2) ''Reviewing records'' is the process of examining records to determine whether to withhold them, in accordance with § 1515.16, and preparing records for disclosure (for instance, by marking records to indicate which portions CEQ is withholding).

(i) ''Reviewing records'' also includes the time CEQ spends obtaining and considering the views of other government agencies under § 1515.17 and the time CEQ spends obtaining and considering formal objections to disclosure under § 1515.41.

(ii) ''Reviewing records'' does not include time CEQ spends resolving general legal or policy questions regarding the application of exemptions.

(iii) CEQ will charge fees for reviewing records even if we determine not to disclose any of the records that we review.

(3) ''Duplicating records'' is the process of reproducing records, including scanning or printing records as necessary, in order to provide you with a copy.

(4) CEQ may include employee costs and direct costs that another component of the Executive Office of the President incurs in assisting CEQ with your request.

(c) CEQ will not charge fees if the total is less than $25.00, or if we determine that the cost of collecting the fee would exceed the amount of the fee.

(d) If CEQ reasonably determines that you (or other persons acting in concert with you) have submitted multiple requests on related matters for the purpose of avoiding fees, we may aggregate those requests and charge fees accordingly.

§ 1515.33 Are there any exceptions for special requesters?

(a) Yes. CEQ makes the following exceptions for special requesters:

(1) CEQ will not charge you fees for searching for records if you are an educational institution, a noncommercial scientific institution, or a representative of the news media. Otherwise, CEQ will not charge you fees for the first 2 hours of searching for records, unless you are a commercial requester.

(2) CEQ will not charge you fees for reviewing records, unless you are a commercial requester.

(3) CEQ will not charge you fees for the first 100 pages of duplication (or an equivalent cost for duplication in other media), unless you are a commercial requester.

(b) For purposes of applying the exceptions in this section:

(1) You are a representative of a non-commercial scientific institution if your institution operates solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry, and your request is in furtherance of scientific research.

(2) You are a representative of an educational institution if you work for or study at a school that operates a program of scholarly research and your request is in furtherance of scholarly research.

(3) You are a representative of the news media if you or your employer gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience, and your request is in furtherance of these activities. For the purposes of this paragraph (b), *news* means information that is about events of current interest to the public.

(i) If you are a freelance journalist, CEQ will consider you a representative of the news media if you can demonstrate that you have a solid basis to expect that a news media entity will publish the work to which your request relates, such as a publishing contract or a strong record of past publications.

(ii) If you are a representative of the news media, CEQ will ordinarily presume that your request does not primarily further a commercial interest for purposes of this section and § 1515.34.

(4) You are a commercial requester if you do not qualify as a special requester under paragraph (b)(1), (2), or (3) of this section and your request furthers a commercial, trade, or profit interest or supports litigation in furtherance of those interests.

(c) If you claim to be a representative of a non-commercial scientific institution, an educational institution, or the news media, CEQ may require you to verify your status by providing reasonable documentation, such as a signed letter on official letterhead. If you claim that your request is non-commercial for another reason, CEQ may require you to explain why it is non-commercial.

§ 1515.34 Can I apply for a fee waiver?

(a) Yes. You can apply for a waiver of fees (or a reduction of fees) by submitting a written statement that explains why disclosing the information will meet the conditions in paragraph (c) of this section.

(b) You can apply for a fee waiver at any time before CEQ completes processing your request or an appeal of your request. You can apply for a fee waiver with respect to a part of the records you seek or with respect to all of them.

(c) CEQ will grant you a fee waiver if all of the following conditions are met:

(1) Disclosure of the requested information would shed light on the operations or activities of the Government. The connection between the subject matter of your request, on the one hand, and identifiable operations or activities of the Federal Government, on the other, must be direct and clear, not remote or attenuated.

(2) Disclosure of the requested information would likely contribute significantly to public understanding of those operations or activities, because it would satisfy both of the following criteria:

(i) Disclosure of the requested records would be meaningfully informative about Government operations or activities. (The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.)

(ii) The disclosure would contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your own individual understanding. (CEQ will presume that your request satisfies this criterion if you are a representative of the news media; otherwise, we will consider your expertise in the subject area as well as your ability and intention to effectively convey information to the public.)

(3) Disclosure of the requested information would not primarily

advance your commercial, trade, or profit interests.

(d) CEQ will determine whether to grant or deny your request for a fee waiver if and when we would otherwise charge you fees. If we determine prior to that time that we are unlikely to grant your request for a fee waiver, we may notify you of our determination so that you may modify your request.

§ 1515.35 When will CEQ contact me about fee-related matters?

(a) If CEQ determines or estimates that we will charge you more than $25.00 in fees, we will notify you of our determination or estimate, unless you have already told us that you are willing to pay fees equal to or in excess of the amount we have determined or estimated.

(1) If CEQ can only estimate a part of the fee, we will explain that in the notice.

(2) If you are entitled to 2 hours of searching and 100 pages of duplication for free for the reasons described in § 1515.33, CEQ will advise you of this and explain whether we have already provided these entitlements.

(3) CEQ may ask you to tell us the maximum amount you are willing to pay in fees in writing, in which case we will toll the period for processing your request until you respond.

(b) If CEQ determines or estimates that the fee will exceed the maximum amount you previously told us you were willing to pay, we will inquire with you about modifying your request or increasing the maximum, and we will toll the period for processing your request until you respond.

(c) If you have not provided a way to contact you regarding fee matters, or you do not respond to a fee-related inquiry within 30 calendar days, CEQ will deny your request.

§ 1515.36 Do I have to pay fees if CEQ misses the deadline for responding to my request?

CEQ will not charge search fees or duplication fees if we have failed to grant or deny your request within the period described in § 1515.13, unless:

(a) CEQ determines that unusual circumstances are present, as described in § 1515.13; and

(1) CEQ finishes processing your request within 10 working days of the original deadline; or

(2) Your request seeks more than 5,000 pages of records; CEQ has provided you timely written notice of the unusual circumstances; and we have discussed with you how you could effectively limit the scope of your request (or we made at least three attempts in good faith to do so); or

(b) A court grants CEQ additional time to process your request due to exceptional circumstances, and we finish processing your request within the period set forth in a court order.

§ 1515.37 When are fees due and how do I pay them?

(a) Ordinarily, CEQ will bill you for fees at the time we respond to your FOIA request.

(b) When CEQ determines or estimates that the total fee for your request will exceed $250, we may require that you pay all or part of the anticipated fee in advance before we will process (or continue to process) your request.

(c) If you have previously failed to pay a FOIA fee that was due to any Government agency within 30 calendar days of the billing date, CEQ may require you to pay the outstanding fee (including interest) and make an advance payment of the anticipated fee for your current request before we will process (or continue to process) your request.

(d) If CEQ requires you to make an advance payment under this section, we will toll the period for processing your request until we receive the payment. If you do not pay within 30 calendar days, we will deny your request.

(e) CEQ will inform you of how to make a payment at the time that we bill you or require you to make an advance payment.

§ 1515.38 What will CEQ do if I do not promptly pay the fee?

If you do not pay a fee within 30 calendar days of the date of the bill:

(a) CEQ may charge interest, at the rate provided for in 31 U.S.C. 3717, from the 31st day following the date of billing through the date we receive your payment; and

(b) CEQ will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, including its administrative procedures, which provide for the use of consumer reporting agencies, collection agencies, and offset.

Subpart E—Confidential Commercial Information and Preservation of Records

§ 1515.41 How does CEQ handle confidential commercial information?

(a) At the time that a person or entity outside the Federal Government (a submitter) directly or indirectly provides information to CEQ, the submitter must mark or otherwise designate any part of its submission that it considers in good faith to be confidential commercial information.

(1) *Confidential commercial information* means commercial or financial information that comes within the scope of Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *In good faith* means not frivolously.

(3) The submitter also must explain how long CEQ should consider the information to be confidential commercial information, or else CEQ will presume that the designation expires after 10 years.

(b) Prior to disclosing information in response to a FOIA request, CEQ will provide written notice to the submitter if:

(1) The submitter has properly designated the information as confidential commercial information pursuant to paragraph (a) of this section; or

(2) CEQ requires the submitter's views on whether the information is confidential commercial information.

(c) Each notice under paragraph (b) of this section will either describe the information in question or include a copy of the requested records (or portions of records) containing the information. If the matter involves a large number of submitters, CEQ may post or publish the notice in a place or manner reasonably likely to inform the submitters of the potential disclosure, instead of sending individual notifications.

(d) CEQ will not provide a notice under paragraph (b) of this section if:

(1) CEQ has determined to withhold the information under § 1515.16;

(2) Someone other than CEQ has already lawfully published the information; or

(3) A law other than the FOIA requires CEQ to disclose the information.

(e) When CEQ provides a notice under paragraph (b) of this section:

(1) CEQ will give the submitter a reasonable period in which to reply.

(2) If the submitter objects to CEQ disclosing the information (in whole or in part), the submitter must reply to CEQ with a detailed explanation of which FOIA exemptions it believes apply to the information and why the information comes within the scope of those FOIA exemptions. CEQ will consider the submitter's reply, if any, in determining whether to disclose the information in question in response to a FOIA request.

(3) If the submitter does not reply to CEQ during the period stated in the notice, CEQ will deem the submitter to have no objection to CEQ's disclosure of the information, except that CEQ may consider late replies in its discretion.

(f) If CEQ determines to disclose information over a submitter's objection, CEQ will notify the submitter in writing.

(1) The notice will explain why CEQ disagreed with the submitter's objections and describe the information CEQ will disclose (or include a copy of the relevant agency records in the form in which CEQ will release them).

(2) The notice will indicate the date on which CEQ will disclose the information, which will be a reasonable number of calendar days following the date of the notice unless the FOIA requires us to disclose the information more promptly.

(3) CEQ will also provide the notice described in this paragraph (f) when CEQ determines to disclose information that a submitter designated as confidential commercial information not in good faith.

(g) CEQ will notify a submitter who has designated confidential commercial information pursuant to paragraph (b) of this section if a requester files a lawsuit seeking to compel CEQ to disclose the information under the FOIA.

(h) CEQ will notify the relevant FOIA requester whenever it provides a notice under paragraph (b) or (f) of this section, and whenever a submitter files a lawsuit to prevent the disclosure of information.

PART 1516—PRIVACY ACT IMPLEMENTATION

Sec.

1516.1 What is the purpose of this part?
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Authority: 5 U.S.C. 552a.

§ 1516.1 What is the purpose of this part?

(a) This part explains how the Council on Environmental Quality (CEQ) manages certain records about individuals under the Privacy Act of 1974 (the Privacy Act). You can find the text of the Privacy Act at 5 U.S.C. 552a.

(b) This part explains how you, a citizen or lawful permanent resident of the United States, can request access to records about yourself, request that CEQ amend or correct those records, or request that CEQ inform you about how it has used those records.

§ 1516.2 What records does this part cover?

(a) This part covers any records about you that CEQ maintains in a system of records.

(b) A record is any item, collection, or grouping of information about you that contains your name or another piece of information that identifies you (for example, your social security number).

(c) CEQ maintains your record in a system of records if CEQ:

(1) Maintains, collects, uses, or disseminates the record as part of a larger group of records; and

(2) Organizes the group by individuals' names or by another piece of information that identifies individuals (such as their Social Security numbers).

§ 1516.3 When will CEQ disclose records about me?

CEQ will only disclose records about you that it maintains in system of records if:

(a) You or your authorized representative submit a request for your own records or agree in writing that CEQ may disclose the records to someone else;

(b) CEQ is making the disclosure as part of one of CEQ's routine uses of the records, which CEQ must have previously established in a written public notice; or

(c) The disclosure qualifies for one of the other exceptions described in section 3 of the Privacy Act, which you can find at 5 U.S.C. 552a(b).

§ 1516.4 How can I obtain access to CEQ's records about me?

(a) You can obtain access to CEQ's records about you by submitting a request by email to *efoia@ceq.eop.gov.* If you are not able to make your request by email, please contact CEQ's Office of the General Counsel for assistance by calling 202–395–5750.

(b) Your request must describe the records that you want, in enough detail to enable CEQ to locate them with a reasonable amount of effort.

(1) You should name or describe the system of records you want CEQ to search.

(2) If you are not sure which system of records you are interested in, you may request that CEQ inform you which of its systems of records, if any, contain records about you.

(c) To protect the privacy of your records, CEQ will require you to verify your identity before processing your request. CEQ may require you to:

(1) Provide a statement that contains your name, your current address, and your date and place of birth, and sign the statement before a notary public;

(2) Verify your identity using an electronic authentication process; or

(3) Supply additional information as necessary in order to verify your identity.

(d) CEQ may deny your request if:

(1) CEQ prepared the records you are seeking in reasonable anticipation of a civil action or proceeding (that is, a lawsuit or a similar proceeding); or

(2) The Privacy Act exempts the system containing your records from the requirement that CEQ provide those records upon request.

(e) If CEQ grants your request, you may arrange to review your records in person, obtain a copy from CEQ, or both. If you choose to review your records in person, you may choose one person to accompany you, except that CEQ may first require you to authorize CEQ to discuss your records in that person's presence.

(f) If CEQ denies your request in whole or in part, CEQ will give you the reason for its decision in writing and explain how you can challenge the denial.

§ 1516.5 How can I get information about how CEQ has used its records about me?

You can request information about how CEQ has used its records about you—called an ''accounting of disclosures''—using the same procedures you would use to make a request for access to your records under § 1516.4.

§ 1516.6 How can I ask CEQ to correct my records?

(a) You can request that CEQ correct or update its records about you using the same procedures you would use to make a request for access to your records under § 1516.4.

(b) In your request, you must explain exactly what change you are requesting and point out specific pieces of information in your CEQ records that are inaccurate, irrelevant, outdated, or incomplete.

(c) CEQ will review your request, decide whether to grant or deny it, and inform you of the decision within 10 working days (*i.e.,* excepting Saturdays, Sundays, and Federal holidays).

(d) If CEQ denies your request, CEQ will give you the reason for its decision in writing and explain how you can appeal the denial.

§ 1516.7 How can I appeal CEQ's decision to deny my request to access or correct records about me?

(a) If CEQ denies your request to access or correct CEQ's records about you, you can appeal the decision using the same procedures you would use to

make a request for access to your records under § 1516.4.

(b) In your appeal, you must include a copy of CEQ's decision denying your request and explain exactly why you believe the decision was wrong.

(c) The General Counsel of CEQ (or the General Counsel's designee) will review your appeal, decide whether to grant or deny it, and inform you of the decision within 30 working days. If it is necessary to extend the time for making a decision, the Chair of CEQ (or the Chair's designee) will explain why in writing.

(d) If CEQ's General Counsel (or designee) denies your appeal, you may provide CEQ with a concise statement that explains your disagreement with the decision, and you may bring a civil lawsuit against CEQ.

(1) If CEQ subsequently discloses the disputed record under § 1516.4, we will clearly identify the disputed portion of the record and attach a copy of your statement of disagreement.

(2) For more information about filing a civil lawsuit, see 5 U.S.C. 552a(g)(1).

§ 1516.8 Will CEQ charge me a fee for a copy of my records?

If you request a copy of CEQ's records about you, CEQ may charge you a fee of no more than 10 cents per page, which you must pay before CEQ provides you with a copy of your records.

[FR Doc. 2025–00960 Filed 1–17–25; 8:45 am]

BILLING CODE 3325–FA–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PS Docket Nos. 21–346, 15–80; ET Docket No. 04–35; FCC 24–5; FR ID 272202]

Resilient Networks; Disruptions to Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule, announcement of compliance date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved the information collection associated with the rule adopted in a Second Report and Order and Second Further Notice of Proposed Rulemaking (*Resilient Networks Second Report and Order*) requiring cable communications, wireless, wireline, and interconnected Voice over Internet Protocol (VoIP) providers to report their infrastructure status information in the Disaster Information Reporting System (DIRS) daily when the Commission activates DIRS in geographic areas in which they provide service, even when their reportable infrastructure has not changed compared to the prior day. It also codifies, in the Commission's outage reporting rules, that a subject provider's Networks Outage Reporting System reporting obligations are waived while they report in DIRS and requires that subject providers who report in DIRS provide a single, final DIRS report to the Commission, within 24 hours of the Commission's deactivation of DIRS, that provides the status of their infrastructure identified to the Commission during the DIRS reporting period that has not yet been fully restored at the time of the deactivation. This document is consistent with the *Resilient Networks Second Report and Order,* which states the Commission will publish a document in the **Federal Register** announcing a compliance date for the rule section and revise the rule accordingly.

DATES: Effective February 20, 2025. Compliance with 47 CFR 4.18, published at 89 FR 25535, on April 11, 2024, and 89 FR 32373 on April 26, 2024, is required as of February 20, 2025. In addition, this document removes 47 CFR 4.18(c), which advised that compliance with the new rules would not be required until § 4.18(c) is removed or the Commission announces a compliance date.

FOR FURTHER INFORMATION CONTACT: Logan Bennett, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, at (202) 418–7790 or *logan.bennett@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contact Nicole Ongele at (202) 418–2991 or via email: *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that OMB approved the information collection requirement in § 4.18 on December 5, 2024.

The Commission publishes this document as an announcement of the compliance date of the rules.

If you have any comments on the burden estimates listed in the following, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. Please include OMB Control Number, 3060–1033, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.* 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).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval as approved with changes on December 5, 2024, for the information collection requirement contained in § 4.18.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1003.

OMB Approval Date: December 5, 2024.

OMB Expiration Date: December 31, 2027.

Title: Communications Disaster Information Reporting System (DIRS).

Form Number: N/A.

Respondents: Business or other for-profit entities, and State, local or tribal governments, and Federal Government.

Number of Respondents and Responses: 18,306 respondents; 292,896 responses.

Estimated Time per Response: 0.166 hours.

Frequency of Response: Annual and on occasion reporting requirements and recordkeeping requirements.

Obligation to Respond: Mandatory. Statutory authority for this collection of information is contained in sections 1, 4(i), 4(j), 4(n), 201, 214, 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309 316, 332, and 403 of the Communications Act of 1934, as amended, and 47 U.S.C. 151, 154(i)–(j) & (n), 201, 214, 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403; sections 2, 3(b), and 6–7 of the Wireless Communications and Public Safety Act of 1999, 47 U.S.C. 615 note, 615, 615a–1, 615b, section 106 of the Twenty First Century Communications and Video Accessibility Act of 2010, 47 U.S.C.

615c, section 506(a) of the Repack Airways Yielding Better Access for Users of Modern Services Act of 2018 (RAY BAUM'S Act), and section 6206 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. 1426.

Total Annual Burden: 48,816 hours.

Total Annual Cost: No Cost.

Needs and Uses: Using DIRS, participating communications companies provide the Commission with their emergency contact information and can subsequently inform the Commission of damage to their infrastructure and facilities, as well as request resources for restoration from the Commission. DIRS respondents provide this information using web-based electronic forms tailored to their types of networks and facilities.

In the Mandated Disaster Information Reporting System Order, 89 FR 32373, April 26, 2024 (previously 89 FR 25535, April 11, 2024), the Commission is requiring cable communications, wireless, wireline and interconnected VoIP providers (Subject Providers) to report their infrastructure status information in DIRS on a daily basis while DIRS is activated. During that time, Subject Providers will not be required to file reports of system outages in the FCC's Network Outage Reporting System (NORS) that arise during the DIRS activation and that are timely reported in DIRS.

The new rules also require Subject Providers to provide a final report to the Commission within 24 hours of the Commission's deactivation of DIRS and the termination of required daily reporting that details the state of their infrastructure at the time of DIRS deactivation and provides an estimated date of resolution of any remaining outages. This mandatory reporting requirement replaces the former voluntary DIRS reporting framework because, after almost two decades of observation, the Commission notes that the United States has been experiencing an increasing number of perilous floods, hurricanes, winter storms, tornados, and wildfires necessitating a more regular activation of DIRS.

List of Subjects in 47 CFR Part 4

Communications equipment, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 4 as follows:

PART 4—DISRUPTIONS TO COMMUNICATIONS

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

Authority: 47 U.S.C. 34–39, 151, 154, 155, 157, 201, 251, 307, 316, 615a–1, 1302(a), and 1302(b); 5 U.S.C. 301, and Executive Order no. 10530.

§ 4.18 [Amended]

■ 2. Amend § 4.18 by removing paragraph (c).

[FR Doc. 2025–00495 Filed 1–17–25; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 90, No. 12
Tuesday, January 21, 2025

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 39

[Docket No. FAA–2025–0008; Project Identifier MCAI–2024–00563–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A321–251NX, –252NX, –253NX, –271NX, and –272NX airplanes. This proposed AD was prompted by discovery of two bushes that had migrated on the latch shaft of an emergency overwing exit door (OWED) during accomplishment of an inspection on an in-service airplane. This proposed AD would require repetitive detailed inspections (DETs) of the affected parts and, in case of discrepancies, modification of the affected parts, and would prohibit the installation of affected parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). 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 March 7, 2025.

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–2025–0008; 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 EASA material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; website *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*. It is also available at *regulations.gov* under Docket No. FAA–2025–0008.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3667; email *Timothy.P.Dowling@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 the **ADDRESSES** section. Include ''Docket No. FAA–2025–0008; Project Identifier MCAI–2024–00563–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 this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this 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 Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3667; email *Timothy.P.Dowling@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2024–0187, dated September 25, 2024 (EASA AD 2024–0187) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A321–251NX, –252NX, –253NX, –271NX, and –272NX airplanes. The MCAI states during accomplishment of an inspection on an in-service airplane, two bushes were found migrated on the latch shaft of an OWED. This condition, if not detected and corrected, could affect the fatigue life of the lower beam of the OWED and, consequently, the structural integrity of the airplane.

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–2025–0008.

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2024–0187 specifies procedures for repetitive DETs for discrepancies of the affected parts and, in case of discrepancies, modification of discrepant parts. Accomplishment of the modification terminates the repetitive inspections. Discrepancies include any signs of bush migration or deterioration of the sealant between the bush and latch bracket. EASA AD 2024–0187 also prohibits the installation of affected parts. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2024–0187 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2024–0187 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2024–0187 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2024–0187 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2024–0187. Material required by EASA AD 2024–0187 for compliance will be available at *regulations.gov* under Docket No. FAA–2025–0008 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 284 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
3 work-hours × $85 per hour = $255	$0	$255	$72,420 per inspection cycle.

The FAA estimates the following costs to do any on-condition action that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
51 work-hours × $85 per hour = $4,335	$2,150	$6,485

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:

Airbus SAS: Docket No. FAA–2025–0008; Project Identifier MCAI–2024–00563–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 7, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A321–251NX, –252NX, –253NX, –271NX, and –272NX airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Unsafe Condition

This AD was prompted by discovery of two bushes that had migrated on the latch shaft of an emergency overwing exit door (OWED) during accomplishment of an inspection on an in-service airplane. The FAA is issuing this AD to address bush migration on the latch shaft. The unsafe condition, if not addressed, could affect the fatigue life of the lower beam of the OWED and, consequently, the structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency AD 2024–0187, dated September 25, 2024 (EASA AD 2024–0187).

(h) Exceptions to EASA AD 2024–0187

(1) Where EASA AD 2024–0187 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (2) of EASA AD 2024–0187 states ''discrepancies, as defined in the ISB,'' this AD requires replacing that text with ''any signs of bush migration or deterioration of the sealant between the bush and latch bracket.''

(3) This AD does not adopt the ''Remarks'' section of EASA AD 2024–0187.

(i) No Reporting Requirement

Although the material referenced in EASA AD 2024–0187 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, AIR–520, Continued Operational Safety 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 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: *AMOC@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, AIR–520, Continued Operational Safety Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

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

(k) Additional Information

For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3667; email *Timothy.P.Dowling@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2024–0187, dated September 25, 2024.

(ii) [Reserved]

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

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

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations,* or email *fr.inspection@nara.gov*.

Issued on January 14, 2025.

Suzanne Masterson,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2025–01358 Filed 1–17–25; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 425

[File No. R507001]

Petition for Rulemaking of Central Office of Reform and Efficiency (Negative Option Rule)

AGENCY: Federal Trade Commission.

ACTION: Receipt of petition; request for comment.

SUMMARY: Please take notice that the Federal Trade Commission (''Commission'') received a petition for rulemaking from the Central Office of Reform and Efficiency and has published that petition online at *https://www.regulations.gov.* This petition requests to clarify vague terms for precise enforcement of negative option plan regulations. The Commission invites written comments concerning the petition. Publication of this petition is pursuant to the Commission's Rules of Practice and Procedure and does not affect the legal status of the petition or its final disposition.

DATES: Comments must identify the petition docket number and be filed by February 20, 2025.

ADDRESSES: You may view the petition, identified by docket number FTC–2025–0003, and submit written comments concerning its merits by using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit sensitive or confidential information. You may read background documents or comments received at *https://www.regulations.gov* at any time.

FOR FURTHER INFORMATION CONTACT: Amy Bunk (phone: 202–326–3476, email: *abunk@ftc.gov*), Office of General Counsel, Federal Trade Commission,

600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: This petition requests to amend 16 CFR 425.1 to clarify vague terms for precise enforcement of negative option plan regulations.

Pursuant to section 18(a)(1)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(1)(B), and FTC Rule 1.31(f), 16 CFR 1.31(f), notice is hereby given that the above-captioned petition has been filed with the Secretary of the Commission and has been placed on the public record for a period of thirty (30) days. Any person may submit comments in support of or in opposition to the petition. All timely and responsive comments submitted in connection with this petition will become part of the public record.

The Commission will not consider the petition's merits until after the comment period closes. It may grant or deny the petition in whole or in part, and it may deem the petition insufficient to warrant commencement of a rulemaking proceeding. The purpose of this document is to facilitate public comment on the petition to aid the Commission in determining what, if any, action to take regarding the request contained in the petition. This document is not intended to start, stop, cancel, or otherwise affect rulemaking proceedings in any way.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2).

Authority: 15 U.S.C. 46; 15 U.S.C. 57a; 5 U.S.C. 601 note.

April J. Tabor,

Secretary.

[FR Doc. 2025–00634 Filed 1–17–25; 8:45 am]

BILLING CODE 6750–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1238

[Docket No. CPSC–2018–0015]

Notice of Availability and Request for Comment: Revision to the Voluntary Standard for Stationary Activity Centers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of availability and request for comment.

SUMMARY: The U.S. Consumer Product Safety Commission's (Commission or CPSC) mandatory rule, Safety Standard for Stationary Activity Centers, incorporates by reference ASTM F2012–18 $^{epsiv:1}$, Standard Consumer Safety Performance Specification for Stationary Activity Centers. ASTM notified the Commission that it has revised this incorporated voluntary standard. CPSC seeks comment on whether the revision improves the safety of stationary activity centers.

DATES: Comments must be received by February 4, 2025.

ADDRESSES: You can submit comments, identified by Docket No. CPSC–2018–0015, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by email, except as described below.

Mail/Hand Delivery/Courier/Confidential Written Submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit to this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2018–0015, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Bradley Gordon, Project Manager, Division of Mechanical and Combustion Engineering, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2099; email: *bgordon@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the Commission to adopt mandatory standards for durable infant or toddler products. 15 U.S.C. 2056a(b)(1). Mandatory standards must be ''substantially the same as'' voluntary standards, or they may be ''more stringent'' than the applicable voluntary standards, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the products. *Id.* Mandatory standards may be based, in whole or in part, on a voluntary standard.

Section 104(b)(4)(B) of the CPSIA specifies the process for when a voluntary standards organization revises a standard that the Commission incorporated by reference under section 104(b)(1). First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the Commission may reject or accept the revised standard. To reject a revised standard, the Commission must notify the voluntary standards organization within 90 days of receiving the notice of revision that the Commission has determined that the revised standard

does not improve the safety of the consumer product and that CPSC is retaining the existing standard. If the Commission does not take this action, the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision (or a later date specified by the Commission in the **Federal Register**). 15 U.S.C. 2056a(b)(4)(B).

Under this authority, the Commission issued a mandatory safety rule that incorporates by reference ASTM F2012–18 epsiv;[1], Safety Standard for Stationary Activity Centers, codified at 16 CFR part 1238 (84 FR 28205, June. 18, 2019). The ASTM standard incorporated by CPSC defines a stationary activity center as ''a freestanding product intended to remain stationary that enables a sitting or standing occupant whose torso is completely surrounded by the product to walk, rock, play, spin or bounce, or all of these, within a limited range of motion.'' 16 CFR 1238.2. This mandatory standard includes performance requirements and test methods, as well as requirements for warning labels and instructions, to address hazards to children.

On January 6, 2025, ASTM notified the Commission that it had approved and published another revised version of the voluntary standard, ASTM F2012–2024. CPSC is assessing the revised voluntary standard to determine, consistent with section 104(b)(4)(B) of the CPSIA, its effect on the safety of stationary activity centers subject to 16 CFR part 1238. The Commission invites public comment to inform CPSC staff's assessment and subsequent Commission consideration of the revisions in ASTM F2012–2024.[1]

The currently incorporated voluntary standard (ASTM F2012–18ε[1]) and the revised voluntary standard (ASTM F2012–24) are available for review in several ways. A read-only copy of the existing, incorporated standard is available for viewing, at no cost, on the ASTM website at: *https://www.astm.org/READINGLIBRARY/.* A read-only copy of the revised standard (ASTM F2012–24), including red-lined versions that identify the changes from the 2018 versions to the 2024 version, is available, at no cost, on ASTM's website at: *https://www.astm.org/CPSC.htm.* Interested parties can also download copies of the standards by purchasing them from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: 610–832–9585; *https://www.astm.org.* Alternatively, interested parties can schedule an appointment to inspect copies of the standards at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, telephone: 301–504–7479.

Comments must be received by February 4, 2025. Because of the short statutory time frame Congress established for the Commission to consider revised voluntary standards under section 104(b)(4) of the CPSIA, CPSC will not consider comments received after this date.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2025–01277 Filed 1–17–25; 8:45 am]

BILLING CODE 6355–01–P

[1] On January 10, 2025, the Commission voted (4–1) to publish this notice.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM25–3–000]

Reliability Standards for Frequency and Voltage Protection Settings and Ride-Through for Inverter-Based Resources

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to approve proposed Reliability Standards PRC–024–4 (Frequency and Voltage Protection Settings for Synchronous Generators, Type 1 and Type 2 Wind Resources, and Synchronous Condensers) and PRC–029–1 (Frequency and Voltage Ride-through Requirements for Inverter-Based Resources), which the North American Electric Reliability Corporation submitted in response to Commission directives. The Commission seeks comments on all aspects of the proposed approval.

DATES: Comments are due March 24, 2025.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through *http://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.

○ *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Syed Ahmad (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502 8718, *Syed.Ahmad@ferc.gov*

Boris Voynik (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502 8902, *Boris.Voynik@ferc.gov*

Felicia West (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502 8948, *Felicia.West@ferc.gov*

Hampden T. Macbeth (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502 8957, *Hampden.Macbeth@ferc.gov*

SUPPLEMENTARY INFORMATION:

1. Pursuant to section 215(d)(2) of the Federal Power Act (FPA),[1] the Commission proposes to approve the addition of the newly defined term ''Ride-through'' to the North American Electric Reliability Corporation (NERC) Glossary of Terms and to approve the proposed Protection and Control (PRC) Reliability Standards PRC–024–4 (Frequency and Voltage Protection Settings for Synchronous Generators, Type 1 and Type 2 Wind Resources, and Synchronous Condensers) [2] and PRC–029–1 (Frequency and Voltage Ride-through Requirements for Inverter-Based Resources (IBR)). We also propose to approve the associated violation risk factors, violation severity levels,

[1] 16 U.S.C. 824o(d)(2).

[2] Type 1 and type 2 wind resources are not inverter-based wind turbine generators. Rather, type 1 and type 2 wind resources rely on passive induction generators with limited ability to control active power, reactive power, or voltage. NERC, *Reliability Guideline: Power Plant Model Verification for Inverter-Based Resources,* vii, ix (Sept. 2018), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/PPMV_for_Inverter-Based_Resources.pdf.*

implementation plans, and effective dates for proposed Reliability Standards PRC–024–4 and PRC–029–1, as well as to approve the retirement of currently effective Reliability Standard PRC–024–3.

2. In Order No. 901, the Commission directed NERC to develop new or modified Reliability Standards addressing, among other things, reliability gaps associated with IBRs tripping or entering momentary cessation in aggregate.[3] Specifically, Order No. 901 directed NERC to submit by November 4, 2024 new or modified Reliability Standards that establish IBR performance requirements, including requirements addressing frequency and voltage ride through, post disturbance ramp rates, phase lock loop synchronization, and other known causes of IBR tripping or momentary cessation.[4]

3. NERC submitted the proposed Reliability Standards in response to Commission directives in Order No. 901.[5] The purpose of proposed Reliability Standard PRC–024–4 ''is to ensure that protection of synchronous generators, type 1 and type 2 wind resources, and synchronous condensers do not cause tripping during defined frequency and voltage excursions in support'' of the Bulk-Power System.'' [6] The purpose of proposed Reliability Standard PRC–029–1 is to ''ensure that IBRs Ride-through disturbances to support the Bulk-Power System . . . during and after defined frequency and voltage excursions.'' [7] We seek comments on all aspects of the proposed approvals.

4. We propose to find that proposed Reliability Standards PRC–024–4 and PRC–029–1 are consistent with and responsive to applicable directives in Order No. 901 in requiring generator owners of IBRs to ride through frequency and voltage excursions, such as a fault on the transmission or sub-transmission system.

5. In addition, we propose to direct NERC to develop and submit two informational filings 12 months and 24 months after the conclusion of NERC's proposed 12-month exemption request period for existing IBRs. Proposed Reliability Standard PRC–029–1 includes a provision that allows existing IBRs that are already in operation when proposed Reliability Standard PRC–029–1 goes into effect (legacy IBRs) to obtain an exemption to the voltage and frequency Ride-through requirements if hardware replacements would be necessary to comply. The Commission seeks to understand the volume of exemptions, the circumstances in which entities have invoked the exemption provision, and ultimately to understand what if any effect the exemption provision has on the efficacy of Reliability Standard PRC–029–1. Therefore, we propose to direct that NERC submit two informational filings that provide details on requested exemptions from generator owners of legacy IBRs for frequency and/or voltage Ride-through requirements.

I. Background

A. Section 215 and Mandatory Reliability Standards

6. Section 215 of the FPA provides that the Commission may certify an Electric Reliability Organization (ERO), the purpose of which is to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[8] Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[9] Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[10] and subsequently certified NERC.[11]

B. Order No. 901

7. In Order No. 901, the Commission explained, among other things, that the majority of installed IBRs use grid-following inverters, which can track grid state parameters (*e.g.,* voltage angle) in milliseconds and react nearly instantaneously to changing grid conditions.[12] The Commission then explained that, as found by multiple NERC reports,[13] some IBRs ''are not configured or programmed to support grid voltage and frequency in the event of a system disturbance, and, as a result, will reduce power output, exhibit momentary cessation, or trip in response to variations in system voltage or frequency.'' [14]

8. In addition, the Commission explained that IBRs across the Bulk-Power System exhibit common mode failures that are amplified when IBRs act in the aggregate.[15] ''IBRs that enter momentary cessation may act in aggregate and cause a reduction in power output far in excess of any individual IBR's impact on the Bulk-Power System.'' [16] The Commission emphasized that the anticipated growth of IBRs would exacerbate these reliability concerns.[17]

9. Therefore, the Commission directed NERC to develop new or modified Reliability Standards pertaining to IBRs in four areas: (1) data sharing; (2) model validation; (3) planning and operational studies; and (4) performance requirements.[18] The Commission required NERC to submit by November 4, 2024 new or modified Reliability Standards that require registered IBR generator owners and operators to use appropriate settings ''to ride through frequency and voltage system disturbances and that permit IBR tripping only to protect the IBR equipment in scenarios similar to when synchronous generation resources use tripping as protection from internal faults.'' [19]

10. The Commission mandated that the new or modified ride through Reliability Standards must require registered IBRs to continue to inject current and perform frequency support during Bulk-Power System disturbances. Additionally, the new or modified Reliability Standards must assure that registered IBR generator owners and operators continue to inject energy into the electric grid during disturbances, within an established no-trip zone. Finally, the Commission directed that the new or modified Reliability Standards must establish requirements for frequency and voltage ride through, post disturbance ramp rates, phase lock loop synchronization, and other known causes of IBR tripping or momentary cessation.[20]

11. The Commission also recognized that some older IBRs may have hardware limitations that IBR owners would have to physically replace and

[3] *Reliability Standards to Address Inverter-Based Resources,* Order No. 901, 88 FR 74250 (Oct. 30, 2023), 185 FERC ¶ 61,042 (2023).

[4] *Id.* PP 7, 56, 190, 229.

[5] *See generally supra* n.3.

[6] NERC Petition at 51.

[7] *Id.* at 24. The Bulk-Power System is defined in the FPA as facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy. 16 U.S.C. 824o(a)(1).

[8] 16 U.S.C. 824o(c).

[9] *Id.* 824o(e).

[10] *Rules Concerning Certification of the Elec. Reliability Org.; & Procs. for the Establishment, Approval, & Enforcement of Elec. Reliability Standards,* Order No. 672, 114 FERC ¶ 61,104, *order on reh'g,* Order No. 672–A, 114 FERC ¶ 61,328 (2006); *see also* 18 CFR 39.4(b) (2024).

[11] *N. Am. Elec. Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[12] Order No. 901, 185 FERC ¶ 61,042 at P 12.

[13] *Id.* P 26 n.53 (listing 12 NERC reports describing IBR behavior during disturbances).

[14] *Id.* P 12 (footnotes omitted).

[15] *Id.* P 13.

[16] *Id.*

[17] *Id.*

[18] *E.g., id.* PP 1, 5, 53.

[19] *Id.* PP 7, 190.

[20] *Id.* P 190.

may have settings and configurations that IBR owners could not modify through software updates and in such circumstances could not implement voltage ride through performance requirements. Thus, the Commission directed NERC to ''determine whether the new or modified Reliability Standards should provide for a limited and documented exemption for certain registered IBRs from voltage ride through performance requirements.'' [21] The Commission added that if NERC determined that an exemption is appropriate, the new or modified Reliability Standards should mitigate the reliability impacts to the Bulk-Power System of such an exemption.[22]

II. NERC Petition

12. On November 4, 2024,[23] in response to Order No. 901, NERC submitted for Commission approval the proposed definition of the term Ride-through for the NERC Glossary of Terms, proposed Reliability Standards PRC–024–4 and PRC–029–1, the associated violation risk factors and violation severity levels, implementation plans and effective dates for Reliability Standards PRC–024–4 and PRC–029–1, and the retirement of currently effective Reliability Standard PRC–024–3.[24] NERC asserts that proposed Reliability Standards PRC–024–4 and PRC–029–1 would ensure that applicable Bulk-Power System-connected resources Ride-through system disturbances, avoiding reliability risks associated with unnecessary tripping and momentary cessation.[25] According to NERC, proposed Reliability Standard PRC–029–1 addresses 13 of the Order No. 901 directives.[26]

A. Addition of Defined Term Ride-Through to NERC Glossary of Terms

13. NERC states that proposed Reliability Standard PRC–029–1 uses the term Ride-through, which NERC proposes to include in the NERC Glossary of Terms. NERC explains that the term Ride-through would mean that ''the plant/facility remains connected and continues to operate through voltage or frequency system disturbances.'' [27]

B. Proposed Reliability Standard PRC–024–4

14. NERC explains that proposed Reliability Standard PRC–024–4 removes language relating to IBR functionality in Requirements R1, R2, R3, and R4 because IBR performance requirements are included in proposed Reliability Standard PRC–029–1. Instead, proposed Reliability Standard PRC–024–4 would maintain capability-based requirements for synchronous generators, synchronous condensers, and type 1 and type 2 wind resources.[28] NERC also notes that, consistent with the proposed definition for IBRs in the NERC Glossary of Terms,[29] type 1 and type 2 wind resources, which operate as asynchronous resources and lack modern controllers capable of riding through system events as they do not have a power electronic device, are not considered IBRs.[30] Moreover, NERC explains that, because synchronous units do not require performance-based requirements to Ride-through system disturbances, proposed Reliability Standard PRC–024–4 would continue to address Ride-through compatible frequency and voltage protection setting ranges for synchronous generators, synchronous condensers, and type 1 and type 2 wind resources.[31]

15. NERC also includes minor edits in proposed Reliability Standard PRC–024–4 to maintain the Standard's frequency and voltage protection capability-based requirements for synchronous resources. Specifically, NERC modified section 4.1.1 to restrict the applicability of proposed Reliability Standard PRC–024–4 to synchronous generators and type 1 and type 2 wind resources, and NERC added section 4.2.2 to include synchronous condensers and associated equipment as applicable facilities.[32] Further, NERC modified Requirements R1, R2, R3, and R4 to apply to transmission owners that apply frequency, voltage, and volts per hertz protection for their synchronous condensers.

C. Proposed Reliability Standard PRC–029–1

16. NERC explains that proposed Reliability Standard PRC–029–1 would address directives in Order No. 901 by establishing frequency and voltage Ride-through performance requirements for generator owners of IBRs.

1. Proposed Requirement R1

17. Under proposed Requirement R1 each generator owner of a NERC-registered IBR must ''ensure the design and operation is such that each IBR meets or exceeds Ride-through requirements, in accordance with the 'must Ride-through zone' as specified in Attachment 1'' of proposed Reliability Standard PRC–029–1, except in the following four conditions specified by the Standard: [33]

- The IBR needed to electrically disconnect in order to clear a fault;
- The voltage at the high-side of the main power transformer went outside an accepted hardware limitation, in accordance with Requirement R4;
- The instantaneous positive sequence voltage phase angle change is more than 25 electrical degrees at the high-side of the main power transformer and is initiated by a non-fault switching event on the transmission system; or
- The Volts per Hz (V/Hz) at the high-side of the main power transformer exceed 1.1 per unit for longer than 45 seconds or exceed 1.18 per unit for longer than 2 seconds.[34]

18. NERC explains that it adopted the Institute of Electrical and Electronics Engineers (IEEE) standard 2800–2022's (IEEE 2800–2022) terminology for ''must

[21] *Id.* P 193.

[22] *Id.* P 199.

[23] Following the issuance of Order No. 901, NERC submitted an informational filing that included its Order No. 901 Work Plan with four key milestones for meeting the directives of Order No. 901. Milestone 1: submit Work Plan (completed Jan. 17, 2024). Milestone 2: submit new or modified Reliability Standards to address performance requirements and post-event performance validation for registered IBRs (completed with NERC's filing of three petitions on Nov. 4, 2024). Milestone 3: submit new or modified Reliability Standards to address data sharing and model validation by Nov. 4, 2025. Milestone 4: submit new or modified Reliability Standards to address planning and operational studies requirements for all IBRs by Nov. 4, 2026. NERC, Informational Filing Regarding the Development of Reliability Standards Responsive to Order No. 901, Docket No. RM22–12–000, at 6 (filed Jan. 17, 2024).

[24] NERC Petition at 2–3, 5. Proposed Reliability Standards PRC–024–4 and PRC–029–1 are not attached to this notice of proposed rulemaking. The proposed Reliability Standards are available on the Commission's eLibrary document retrieval system in Docket No. RM25–3–000 and on the NERC website, *www.nerc.com*.

[25] *Id.* at 1, 19.

[26] *Id.* Ex. D (Standards Development Consideration of Directives from FERC Order No. 901).

[27] *Id.* at 23.

[28] *Id.* at 15.

[29] On November 4, 2024, NERC concurrently filed along with other Milestone 2 Reliability Standards, a petition with the Commission for approval of its proposed definition for IBR as:

A plant/facility consisting of individual devices that are capable of exporting Real Power through a power electronic interface(s) such as an inverter or converter, and that are operated together as a single resource at a common point of interconnection to the electric system. Examples include, but are not limited to, plants/facilities with solar photovoltaic (PV), Type 3 and Type 4 wind, battery energy storage system (BESS), and fuel cell devices.

NERC, Petition for Approval of a New Term ''Inverter-Based Resource'' Used in NERC Reliability Standards, Docket No. RD25–1–000, at 1 (filed Nov. 4, 2024) (IBR Definition), currently pending before the Commission.

[30] NERC Petition at 49. *See* IBR Definition.

[31] NERC Petition at 49.

[32] *Id.* at 51.

[33] *Id.* at 25.

[34] *Id.* at 26.

ride-through zones,'' which are defined in terms of voltage and frequency magnitude and time duration.[35] NERC explains that it considered but ultimately rejected Ride-through criteria more stringent than set forth in IEEE 2800–2022 due to industry comments raised during the IBR technical conference conveyed by NERC.[36] But, NERC adds, the must Ride-through zones in proposed Requirement R1 are ''more similar'' to IEEE 2800–2022's Ride-through zones, are more robust than currently effective PRC–024–3, and are sufficient to address the recommendations NERC identified in response to reports and assessments analyzing IBR loss of power events.[37]

19. NERC asserts that proposed Requirement R1 is responsive to the directive that NERC develop performance-based Reliability Standards that require IBRs to ride through voltage system disturbances and require post-disturbance ramp rates to return to pre-disturbance levels.[38] Similarly, NERC avers that proposed Requirement R1 is consistent with the directive that IBRs inject current and perform frequency support during a disturbance by requiring IBRs remain connected and fulfill control and regulation functions to Ride-through a system disturbance.[39] Additionally, NERC asserts that the provision in proposed Requirement R1 requiring IBRs to meet or exceed Ride-through requirements in Attachment 1 of proposed Reliability Standard PRC–029–1 that restricts the use of momentary cessation satisfies the directive to prohibit momentary cessation in the no-trip zone during disturbances.[40]

2. Proposed Requirement R2

20. Under proposed Requirement R2, each generator owner of a NERC-registered IBR must adhere to voltage Ride-through performance criteria during system disturbances unless a documented hardware limitation exists in accordance with Requirement R4.[41] Similar to Requirement R1, NERC asserts that proposed Requirement R2 satisfies the following directives: (1) that NERC develop performance-based Reliability Standards that require IBRs to ride through voltage system disturbances; and (2) that IBRs inject current and perform frequency support during a disturbance by requiring IBRs remain connected and fulfill control and regulation functions to Ride-through a system disturbance.[42]

3. Proposed Requirement R3

21. Under proposed Requirement R3, each generator owner of a NERC-registered IBR must ensure that its IBR adheres to Ride-through requirements during frequency excursion events by continuing to exchange current and remain electrically connected in accordance with the ''must ride-through zone'' as specified in the proposed Reliability Standard's Attachment 2 and while the ''absolute rate of change of frequency (RoCoF) magnitude is less than or equal to 5 Hz/second, unless a documented hardware limitation exists in accordance with Requirement R4.'' [43] NERC explains that proposed Requirement R3 contains a wider frequency Ride-through band than presently exists in Reliability Standard PRC–024–3 and is consistent with IEEE 2800–2022.[44]

22. NERC asserts that proposed Requirement R3 is responsive to the directive that NERC develop performance-based Reliability Standards that require IBRs to ride through frequency system disturbances.[45] Additionally, NERC contends that proposed Requirement R3 satisfies the directive that IBRs inject current and perform frequency support during a disturbance by requiring IBRs remain connected and fulfill control and regulation functions to Ride-through a system disturbance.[46]

4. Proposed Requirement R4

23. Proposed Requirement R4 would allow each generator owner of an existing legacy IBR, *i.e.,* one in service by the effective date of PRC–029–1, to obtain an exemption to the voltage and frequency Ride-through requirements if the generator owner would need hardware replacements to comply with Requirements R1 through R3. Specifically, Requirement R4 provides that ''[e]ach Generator Owner identifying an IBR that is in-service by the effective date of PRC–029–1, has known hardware limitations that prevent the IBR from meeting Ride-through criteria as detailed in Requirements R1–R3, and requires an exemption from specific Ride-through criteria shall . . . [d]ocument information supporting the identified hardware limitation. . . .'' [47] Each generator owner of an IBR must provide the information (unless it is considered proprietary by the original equipment manufacturer) to each planning coordinator, transmission planner, transmission operator, and reliability coordinator in the footprint in which the legacy IBR is located.[48] Moreover, the generator owner must submit documentation to the relevant Compliance Enforcement Authority—typically a Regional Entity—that ''must accept that all aspects of the documentation specified in proposed Requirement R4 have been provided by the Generator Owner before an exemption can [be] granted.'' [49] According to NERC, this last requirement ''would ensure that NERC has visibility into each hardware exemption that is granted and that [it has] been accurately limited to the particular limitation of the hardware.'' [50]

24. NERC explains that it determined that an exemption process for generator owners of legacy IBRs for voltage and frequency performance requirements is necessary. In its petition, NERC expressed concern that hardware limitations would lead entities to take units offline to retrofit IBRs or risk noncompliance and could determine that the economically prudent course of action is to retire the units.[51] The implementation plan gives generator owners 12 months to request an exemption following the effective date of the Reliability Standard, after which NERC will not accept further exemption requests.[52] If the hardware causing the limitation is replaced later, the generator owner must communicate this information to the planning coordinator, transmission planner, reliability coordinator, and transmission operator within 90 days of the hardware replacement and comply with Requirements R1 through R3.[53] Further,

[35] *Id.* at 27.

[36] Following the failure of the third ballot on proposed Reliability Standard PRC–024–4 and proposed Reliability Standard PRC–029–1, NERC convened a public technical conference under section 321 of the NERC Rules of Procedure to discuss issues surrounding the Order No. 901 directives. *Id.* at 7. Section 321 of the NERC Rules of Procedure allows the NERC Board of Trustees to take special actions when a ballot pool has ''failed to approve a proposed Reliability Standard that contains a provision to adequately address a specific matter identified in a directive issued'' by the Commission. NERC, *Rules of Procedure,* Sec. 321 (Nov. 28, 2023), *https://www.nerc.com/AboutNERC/RulesOfProcedure/NERC%20ROP%20effective%2020240627_with%20appendicies_signed.pdf.*

[37] NERC Petition at 27–28.

[38] *Id.* at 42.

[39] *Id.*

[40] *Id.* at 42–43.

[41] *Id.* at 29–33.

[42] *Id.* at 42.

[43] *Id.* at 33.

[44] *Id.* at 36.

[45] *Id.* at 42.

[46] *Id.*

[47] *Id.* at 36–37.

[48] *Id.* at 37.

[49] *Id.* at 40.

[50] *Id.*

[51] *Id.* at 38.

[52] *Id.* at 37.

[53] *Id.* at 41.

NERC explains that the exemptions must be specific and limited to the voltage or frequency bands and associated duration that cannot be satisfied or as to the number of cumulative voltage deviations within a ten-second period that the equipment can Ride-through if it is less than four deviations within any ten-second period.[54]

25. NERC asserts that proposed Requirement R4 meets the directive that NERC determine whether the new or modified Reliability Standards provide an opportunity for certain generator owners of IBRs that are currently in operation and unable to meet performance requirements to request an exemption from voltage ride-through performance requirements.[55] NERC determined that a frequency exemption was also necessary and appropriate because of hardware-based capability limitations for a significant amount of installed IBRs, a concern that was raised during the IBR technical conference convened by NERC.[56]

26. Regarding the Commission directive to NERC to develop new or modified Reliability Standards to mitigate the reliability impacts to the Bulk-Power System of approved exemptions, NERC claims that the reliability impacts of voltage and frequency ride-through exemptions are mitigated by existing Reliability Standards that address the responsibilities of transmission planners, planning coordinators, reliability coordinators, and transmission operators.[57] Moreover, under Milestone 4 of the Order No. 901 Work Plan,[58] NERC indicates that it ''will develop Reliability Standards that will specifically require evaluations that include accurately-modeled performance capabilities of IBRs, inclusive of any documented Ride-through criteria exemption accepted through the process detailed in proposed Reliability [Standard] PRC–029–1 Requirement R4, and that evaluate for reliability impacts'' on the Bulk-Power System.[59]

[54] *Id.* at 39.

[55] *Id.* at 44.

[56] *Id.* at 38–39.

[57] *Id.* at 46. *See also id.* n.67 (providing as examples existing Reliability Standards IRO–002–7 (Reliability Coordination—Monitoring and Analysis), IRO–008–3 (Reliability Coordinator Operational Analyses and Real-time Assessments), TOP–002–4 (Operations Planning), and TPL–001–5.1 (Transmission System Planning Performance Requirements)).

[58] *See supra* note 23 for more information on the elements of the Order No. 901 Work Plan's milestones.

[59] NERC Petition at 46.

III. Discussion

27. Pursuant to section 215(d)(2) of the FPA, the Commission proposes to approve the proposed definition of Ride-through and proposed Reliability Standards PRC–024–4 and PRC–029–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. We also propose to approve the associated violation risk factors, violation severity levels, implementation plans, and effective dates of Reliability Standards PRC–024–4 and PRC–029–1, as well as to approve the retirement of currently effective Reliability Standard PRC–024–3.

28. We propose to find that the proposed Reliability Standards are consistent with the performance requirement directives of Order No. 901 as generator owners of NERC-registered IBRs will be subject to the Ride-through performance requirements of proposed Reliability Standard PRC–029–1 unless exempted under that standard. The Commission seeks comments on all aspects of these proposals.

A. Proposal To Approve the Addition of Defined Term Ride-Through to NERC Glossary of Terms

29. NERC's proposed definition of the term Ride-through for inclusion in the NERC Glossary of Terms should provide a clear and consistent understanding of the term across all Reliability Standards, including proposed new or modified Reliability Standards filed with the Commission in response to various Order No. 901 directives. We therefore propose to approve the proposed definition of the term Ride-through for inclusion in the NERC Glossary of Terms.

B. Proposal To Approve Proposed Reliability Standard PRC–024–4

30. Proposed Reliability Standard PRC–024–4 should maintain the Reliability Standard's frequency and voltage protection setting requirements as applicable to only synchronous generators, type 1 and 2 wind resources, and synchronous condensers. Specifically, synchronous generators, type 1 and 2 wind resources, and synchronous condensers will have to have voltage and frequency protection set to avoid tripping during defined frequency and voltage excursions. We believe that it is reasonable to remove references to IBRs in proposed Reliability Standard PRC–024–4 as IBRs would be subject to the Ride-through requirements in proposed Reliability Standard PRC–029–1.

31. Therefore, we propose to approve proposed Reliability Standard PRC–024–4 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. We seek comments on all aspects of our proposed approval of proposed Reliability Standard PRC–024–4.

C. Proposal To Approve Proposed Reliability Standard PRC–029–1

32. We propose to find that the proposed Reliability Standard PRC–029–1 responds to the relevant Order No. 901 Ride-through performance requirement directives. The Ride-through provisions of proposed Requirements R1 through R3 would require that each generator owner of a NERC-registered IBR ensure that their IBR continues to inject current and perform frequency support during a Bulk-Power System disturbance and avoids momentary cessation in the no-trip zone during a disturbance by meeting or exceeding the Ride-through requirements. Further, these proposed provisions establish specific requirements for frequency and voltage Ride-through, post-disturbance ramp rates, phase lock loop synchronization, and other known causes of IBR tripping or momentary cessation. The Ride-through requirements of proposed Requirements R1 through R3 should strengthen the reliability of the Bulk-Power System by ensuring that IBRs are designed and operated to remain connected to the Bulk-Power system and continue to inject real and/or reactive current during system disturbances.

33. The Commission proposes to find that NERC reasonably determined that an exemption process for generator owners of legacy IBRs for voltage and frequency performance requirements as set out in Requirement R4 is appropriate based on industry input during the standards drafting process, as explained in the NERC Petition.[60] Regarding whether NERC met the Order No. 901 directive to develop new or modified Reliability Standards to mitigate the reliability impacts to the Bulk-Power System of such exemptions, we will defer our determination until after NERC files Milestone 4 Reliability Standards with the Commission by November 4, 2026. As described by NERC's petition, NERC is planning to meet this mitigation directive with its anticipated approach to Milestone 4 Reliability Standards that will require accurate modeling of IBRs' performance capabilities, including accepted Ride-through criteria exemptions, and

[60] *Id.* at 38–41.

evaluate reliability impacts on the Bulk-Power System.[61]

34. The Commission seeks comments on its proposed approval of proposed Reliability Standard PRC–029–1. While we seek comments on all aspects of the proposed Reliability Standard, we are particularly interested in comments and supporting materials, where applicable, on concerns regarding: (1) the IBR performance requirement set forth in Requirement R1; (2) the absolute RoCoF in Requirement R3; and (3) the adequacy of NERC's proposed exemption provision in Requirement R4 as it pertains to both projects in service and those under contract, but not yet in-service as of the effective date of Reliability Standard PRC–029–1. Comments on whether the exemption provision is too broad or too narrow should address the risks and benefits of expanding or narrowing the exemption provision and should provide detailed, quantified, and fact-based support for their position.

D. Proposed Directive for Informational Filings

35. Finally, we propose to direct NERC to develop and submit two informational filings pertaining to requests for exemption by generator owners of legacy IBRs from frequency and/or voltage Ride-through requirements. While we understand the appropriateness of a limited exemption for certain legacy equipment that may otherwise not be able to comply with the proposed Ride-through requirements, we are concerned about the practical implications of the exemptions as proposed. Specifically, if too many generators are exempt from the frequency and/or voltage Ride-through requirements, proposed Reliability Standard PRC–029–1 may fail to address the reliability gaps associated with IBRs tripping or entering momentary cessation in aggregate that it is intended to address.[62] Accordingly, we propose that 12 months and 24 months after the conclusion of the 12-month exemption request period, NERC submit an informational filing with the following data for (1) each Interconnection and (2) each reliability coordinator area (within that interconnection) within the United States:

- Total number of IBRs for which NERC-registered generator owners will be subject to compliance with Reliability Standard PRC–029–1;
- Aggregated megawatts (MW) capacity of IBRs for which NERC-registered generator owners will be subject to compliance with Reliability Standard PRC–029–1;
- Total number of IBRs for which NERC-registered generator owners requested exemptions;
- Aggregated MW capacity of IBRs for which NERC-registered generator owners requested exemptions;
- Total number of IBRs for which NERC-registered generator owners were granted exemptions;
- Aggregated MW capacity of IBRs for which NERC-registered generator owners were granted exemptions;
- Total number of granted exemptions by exemption type (voltage and/or frequency);
- Aggregated MW capacity of granted exemptions by exemption type (voltage and/or frequency);
- Total number of granted exemptions by IBR type (wind, solar PV, BESS, fuel cell); and
- Aggregated MW capacity of granted exemptions by IBR type (wind, solar PV, BESS, fuel cell).

Additionally, we propose that each informational filing include an analysis of the reasons that entities provided for exemptions (both granted and denied),[63] an evaluation of the efficacy of the exemption process, and any recommendations to modify either the substance or procedural aspects.

IV. Information Collection Statement

36. The FERC–725G information collection requirements are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995. OMB's regulations require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Commission solicits comments on the need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

37. The Commission bases its paperwork burden estimates on the additional paperwork burden presented by the proposed Reliability Standards PRC–024–4 and PRC–029–1, as modified and new Reliability Standards, respectively, and the proposed directive for NERC to submit two informational filings related to Ride-through exemption requests.[64] Reliability Standards are objective-based and allow entities to choose compliance approaches best tailored to their systems. The NERC Compliance Registry, as of September 2024, identifies the following unique U.S. entities that are subject to mandatory compliance with Reliability Standard PRC–024–4: 1,230 generator owners will have an additional compliance burden. It is estimated that there will be no additional compliance burden for transmission owners that have synchronous condensers, as that data is not included in the NERC Compliance Registry, and transmission owners are already applicable to PRC–024–4. The estimated unique U.S. entities subject to Reliability Standard PRC–029–1 compliance are based on numbers supplied by NERC, with 591 registered generator owners that own bulk electric system (BES) solar and wind facilities and a median of 755 generator owners that own non-BES facilities.[65] Based on these assumptions, we estimate the following reporting burden:

[61] *Id.* at 46.

[62] *See, e.g.,* Order No. 901, 185 FERC ¶ 61,042 at PP 1, 13, 190.

[63] NERC Petition at 40 (explaining that under Requirement R4.2.2, NERC will work with regional entities to evaluate exemption submissions in a fair and consistent manner across the ERO Enterprise and NERC will monitor the disposition of requests as the proposed standard is implemented).

[64] *See supra* P 35.

[65] NERC estimates that 591 BES IBRs and a range of 588 to 922 non-BES IBRs, with a median of 755, will be subject to proposed Reliability Standard PRC–029–1 and the other Milestone 2 Reliability Standards that were filed in Docket Nos. RD25–2–000 and RD25–3–000. *See* NERC, Petition For Approval of Proposed Distribution Monitoring Reliability Standards PRC–028–1 and PRC–002–5, Docket No. RD25–2–000, at 41 n.60 (filed Nov. 4, 2024) (description of NERC estimates of BES IBRs and the range of non-BES IBRs that would be subject to compliance with proposed Reliability Standard PRC–028–1).

PROPOSED CHANGES IN BURDEN PRC–024–4 DOCKET NO. RM25–3–000

Reliability standard	Type and number of entity [66]	Number of annual responses per entity	Total number of responses	Average number of burden hours per response [67]	Total burden hours
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
Annual Collection PRC024–4 FERC–725G					
Annual review and record retention	1,230 (GO)	1	1,230	20 hrs. $70.67/hr	24,600 hrs. $1,738,482
Total for PRC–024–4			1,230	20 hrs. $70.67/hr	24,600 hrs. $1,738,482

PROPOSED BURDEN PRC–029–1 DOCKET NO. RM25–3–000

Reliability standard	Type and number of entity [68]	Number of annual responses per entity	Total number of responses	Average number of burden hours per response [69]	Total burden hours
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
Annual Collection PRC–029–1 FERC–725G					
Annual review and record retention	591 (BES IBR GO) 755 (Non-BES IBR GO)	1 1	591 755	40 hrs. $70.67/hr 80 hrs. $70.67/hr	23,640 hrs. $1,670,638.80 60,400 hrs. $4,268,468.00
Total for PRC–024–4			1,346		84,040 hrs. $5,939,106.80

38. The responses and burden hours for Years 1–3 will total respectively as follows:

- Year 1–3 each: for proposed Reliability Standard PRC–024–4 will be 1,230 responses; 24,600 hours; and
- Year 1–3 each: for proposed Reliability Standard PRC–029–1 will be 1,346 responses; 84,040 hours.
- The annual cost burden for each year One to Three is $1,738,482 for proposed Reliability Standard PRC–024–4; and $5,939,106.80 for proposed Reliability Standard PRC–029–1.

39. *Title:* Mandatory Reliability Standards, Revised Protection and Control Reliability Standards

Action: Revision to FERC–725G information collection.

OMB Control No.: 1902–0281.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This notice of proposed rulemaking proposes to approve the requested modifications to Reliability Standards pertaining to the protection and control of the Bulk-Power System. As discussed above, the Commission proposes to approve proposed Reliability Standards PRC 024–4 and PRC–029–1 pursuant to section 215(d)(2) of the FPA because it establishes frequency and voltage Ride-through requirements for IBRs. Additionally, the Commission proposes to direct NERC to file two informational filings with the Commission on Ride-through exemption requests.

Internal Review: The Commission has reviewed the proposed Reliability Standards and made a determination that its action is necessary to implement section 215 of the FPA.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 [Attention: Kayla Williams, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

40. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the Commission, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include Docket Number RM25–3–000 and OMB Control Number 1902–0281.

V. Environmental Analysis

41. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[70] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[71] The actions proposed herein falls within this categorical exclusion in the Commission's regulations.

[66] The ''Number of Entity'' data is compiled from the September 24, 2024, edition of the NERC Compliance Registry.

[67] The estimated hourly cost (salary plus benefits) is a combination of the following categories from the Bureau of Labor Statistics (BLS) website, *http://www.bls.gov/oes/current/naics2_22.htm:* 75% of the average of an Electrical Engineer (17–2071) $79.31/hr., 79.31 × .75 = 59.4825 ($59.48-rounded) ($59.48/hour); and 25% of an Information and Record Clerk (43–4199) $44.74/hr., $44.74 × .25% = 11.185 ($11.19 rounded) ($11.19/hour), for a total ($59.48+$11.19 = $70.67/hour).

[68] The ''Number of Entity'' data is compiled from NERC's petition for approval of proposed Reliability Standard PRC–028–1 in Docket No. RD25–2–000. NERC, Petition For Approval of Proposed Distribution Monitoring Reliability Standards PRC–028–1 and PRC–002–5, Docket No. RD25–2–000, at 41 n.60 (filed Nov. 4, 2024).

[69] The estimated hourly cost (salary plus benefits) is a combination of the following categories from the Bureau of Labor Statistics (BLS) website, *http://www.bls.gov/oes/current/naics2_22.htm:* 75% of the average of an Electrical Engineer (17–2071) $79.31/hr., 79.31 × .75 = 59.4825 ($59.48-rounded) ($59.48/hour); and 25% of an Information and Record Clerk (43–4199) $44.74/hr., $44.74 ×.25% = 11.185 ($11.19 rounded) ($11.19/hour), for a total ($59.48+$11.19 = $70.67/hour).

[70] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[71] 18 CFR 380.4(a)(2)(ii).

VI. Regulatory Flexibility Act Certification

42. The Regulatory Flexibility Act of 1980 (RFA)[72] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[73] The SBA revised its size standard for electric utilities (effective March 17, 2023) to a standard based on the number of employees, including affiliates (from the prior standard based on megawatt hour sales).[74]

43. Proposed Reliability Standard PRC–024–4 (included in FERC–725G) will apply to approximately 1,230 generator owners and proposed Reliability Standard PRC–029–1 (included in FERC–725G) will apply to approximately 1,346 BES/IBR combined generator owners and non-generator owners in the United States.[75] Pursuant to SBA regulations, the employment threshold for generator owners is 950 employees. We estimate that the percentage of employees that are considered small to be 74.59% based on the North American Industry Classification System 221121 code (Electric Bulk Power Generation) and that the annual cost for each entity will be $1,413.40 for each generator owner and $2,826.80 for each BES IBR generator owner and $5,653.60 for each Non-BES IBR generator owner.

44. We view this as a minimal economic impact for each entity. Accordingly, we certify that the proposed Reliability Standards PRC–024–4 and PRC–029–1 will not have a significant economic impact on a substantial number of small entities. Thus, no regulatory flexibility analysis is required.

VII. Comment Procedures

45. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due March 24, 2025. Comments must refer to Docket No. RM25–3–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

46. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

47. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier-or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

VIII. Document Availability

48. 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*).

49. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

50. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Issued: December 19, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2025–00263 Filed 1–17–25; 8:45 am]

BILLING CODE 6717–01–P

[72] 5 U.S.C. 601–612.

[73] 13 CFR 121.101.

[74] 13 CFR 121.201, Subsector 221 (Utilities).

[75] Many respondents serve multiple roles in the NERC Compliance Registry, so there is likely double counting in the estimates.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 128, 143

[USCBP–2025–0003]

RIN 1685–AA02

Trade and National Security Actions and Low-Value Shipments

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to the U.S. Customs and Border Protection (CBP) regulations pertaining to the administrative exemption for certain low-value shipments not exceeding $800. Specifically, CBP proposes to make merchandise that is subject to specified trade or national security actions ineligible for this administrative exemption and to require that certain shipments claiming this exemption provide the 10-digit Harmonized Tariff Schedule of the United States (HTSUS) classification of the merchandise.

DATES: Comments must be received by March 24, 2025.

ADDRESSES: Please submit comments, identified by docket number, by the following method:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2025–0003.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Comments must be submitted in English, or an English translation must be provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may also be found at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher Mabelitini, Director, Intellectual Property Rights & E-Commerce Division, Office of Trade, U.S. Customs and Border Protection, 202–325–6915, *ecommerce@cbp.dhs.gov.*

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I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this notice of proposed rulemaking (NPRM). U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP will reference a specific portion of the NPRM, explain the reason for any recommended change, and include data, information, argument, or authority that supports such recommended change.

Regulatory Alternatives

This rulemaking proposes to make imported merchandise subject to certain trade or national security actions ineligible for the administrative exemption found in 19 U.S.C. 1321(a)(2)(C) and to require that certain shipments claiming this exemption provide the 10-digit Harmonized Tariff Schedule of the United States (HTSUS) classification of the merchandise. However, in addition to comments on the above proposals, CBP is also requesting comments on whether these proposals should be extended to bona-fide gifts valued at $100 or less ($200, if the gift is from certain island possessions) sent from persons in foreign countries to persons in the United States and/or certain personal or household articles valued at $200 or less accompanying persons arriving in the United States pursuant to 19 U.S.C. 1321(a)(2)(A) and 19 U.S.C. 1321(a)(2)(B).

Moreover, given the unique nature of the international mail shipments in the postal environment as set forth in Section II.D below, CBP is specifically seeking public comments as to the effects of this proposed rulemaking on those shipments into the United States.

II. Background and Purpose

A. Administrative Exemption From Duties and Taxes

Section 321(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)), as amended by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), Section 901, Public Law 114–125, 130 Stat. 122 (Section 321), authorizes administrative exemptions from duty and tax imposed on or by reason of importation for three categories of imported articles, when the amount of revenue to be collected is disproportionate to the expense and inconvenience caused to the government. These categories include: bona-fide gifts valued at $100 or less ($200, if the gift is from certain island possessions) sent from persons in foreign countries to persons in the United States; certain personal or household articles valued at $200 or less accompanying persons arriving in the United States; and other imported articles when the value of the article is $800 or less.[1] These exemptions are subject to the condition that the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from duty cannot exceed the authorized amounts. Also, these exemptions are not to be granted if merchandise covered by a single order or contract is forwarded in separate lots to obtain the benefit of duty- and tax-free entry. Finally, these exemptions are also not to be granted in circumstances where regulations prescribe exceptions or limitations on eligibility for these exemptions. Pursuant to Section 321(b), such regulations may be prescribed whenever such action is consistent with the purpose of Section 321(a), or, when ''necessary for any reason to protect the revenue or to prevent unlawful importations.'' All further references to ''the administrative exemption'' in this document will be to the administrative exemption found in 19 U.S.C. 1321(a)(2)(C), unless specified otherwise.

All merchandise imported into the customs territory of the United States is subject to entry and clearance procedures, unless specifically excepted. These procedures ensure the proper appraisement, valuation, and tariff classification of the merchandise for the purpose of collecting the lawful amount of duties owed, as well as compliance with all other laws and regulations administered and enforced by CBP. Different procedures are provided for the entry and clearance of merchandise depending upon the value of the merchandise. Shipments of merchandise valued at $2,500 or less and entered pursuant to 19 U.S.C. 1498(a)(1)(A) are referred to as ''informal entries.'' Specifically, 19 U.S.C. 1498(a)(1)(A) authorizes the Secretary of the Treasury[2] to ''prescribe rules and regulations for the declaration and entry of merchandise when the aggregate value of the shipment does not exceed an amount specified . . . by regulation, but not more than $2,500.'' Shipments that are eligible for the administrative exemptions at 19 U.S.C. 1321(a)(2) are a subset of the informal entries covered by 19 U.S.C. 1498(a)(1)(A). The statutory framework of 19 U.S.C. 1498 authorizes, in effect, a less formal entry process than under 19 U.S.C. 1484 (referred to as ''formal entries''). As a result, informal entry procedures are less burdensome and complex than the formal entry procedures. These simplified procedures reduce the overall administrative burden on informal entry filers. The regulations pertaining to entry of merchandise claiming the exemptions in 19 U.S.C. 1321(a)(2) are found throughout various parts of title 19 of the Code of Federal Regulations (CFR). The informal entry procedures for low-value shipments claiming the administrative exemption under 19 U.S.C. 1321(a)(2)(C) are specifically found in Part 143, subpart C, which cross-reference other regulations establishing eligibility requirements. Pursuant to the current text of 19 CFR 143.23(j), such eligible merchandise must be entered by providing certain information on a bill of lading or a manifest listing each bill. However, the requirements for shipments imported by

[1] 19 U.S.C. 1321(a)(2). Shipments entered under this exemption are also commonly referred to as ''*de minimis*'' shipments.

[2] In accordance with Treasury Order 100–20, the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority related to the customs revenue functions vested in the Secretary of the Treasury as set forth in 6 U.S.C. 212 and 215, subject to certain exceptions.

mail are found in 19 CFR part 145, and the requirements for shipments imported by express consignment operators and carriers are covered by 19 CFR part 128.[3]

Over the last 10 years, the number of shipments entering the United States claiming the administrative exemption has increased significantly, from approximately 139 million a year to over one billion a year. This exponential increase in shipments claiming the administrative exemption creates challenges to CBP's effective enforcement of U.S. trade laws, health and safety requirements, intellectual property rights, and consumer protection rules. Low-value e-commerce shipments pose the same health, safety, and security risks as higher-value shipments. Transnational criminal organizations and other bad actors perceive low-value shipments as less likely to be interdicted because these types of shipments are not subject to the more extensive formal entry procedures. This has resulted in attempts to enter illicit goods, such as illicit fentanyl, into the country through these types of shipments. Of particular concern are the large volume of daily importations and the more limited data regarding low-value shipments which make it increasingly difficult for CBP to target and block illicit synthetic drugs such as fentanyl and synthetic drug raw materials and related manufacturing equipment from entering the country. These developments have also created challenges with respect to the enforcement of trade actions designed to address threats to national security, unreasonable or discriminatory trade practices, and injury to domestic industry caused by import surges. In response to the significant changes in the trade environment and supply chains, substantial increases in the volume of shipments, and advancements to CBP's technological capabilities, CBP is proposing two regulatory actions to modify the regulations governing the administrative exemption.[4]

First, on [DATE], CBP published an NPRM regarding the entry of certain low-value shipments eligible for the administrative exemption under Section 321(a)(2)(C). *See* 90 FR 3048 The NPRM, titled ''Entry of Low-Value Shipments'' (ELVS NPRM) proposed various amendments to the CBP regulations pertaining to the entry of low-value shipments.

The existing informal entry requirements for low-value shipments are less rigorous than those required for other entry types, and often do not provide sufficient information for CBP to accurately identify the merchandise in the shipment and the parties involved in its sale and purchase. Furthermore, novel and complex e-commerce business models have expanded the traditional array of parties involved in the import transaction. New or infrequent importers often possess less familiarity with U.S. customs laws and regulations, which can lead to the attempted importation of non-compliant goods.

The ELVS NPRM proposed the creation of a new entry process for entering low-value shipments, referred to as the ''enhanced entry process,'' which would allow CBP to target high-risk shipments more effectively. The enhanced entry process is set forth in the ELVS NPRM as proposed § 143.23(l) and would require the provision of the 10-digit HTSUS classification of the merchandise. The ELVS NPRM also proposed revisions to the current process for entering low-value shipments, referred to as the ''basic entry process,'' to require additional data elements that would assist CBP in verifying eligibility for duty- and tax-free entry. The basic entry process is set forth in the ELVS NPRM as proposed § 143.23(k).

Second, this rulemaking proposes to prescribe exceptions to eligibility for the administrative exemption under Section 321(a)(2)(C). These exceptions, described in more detail below, are consistent with the purpose of Section 321(a), and necessary to protect the revenue and prevent unlawful importations. In addition, this rulemaking proposes to require a 10-digit HTSUS classification for shipments entered using the basic entry process claiming the administrative exemption under Section 321(a)(2)(C).

B. Specified Trade and National Security Actions

The President has statutory authority to impose tariffs and establish quotas (among other actions) to address threats to national security, and serious injury or threat thereof to domestic industry, while the U.S. Trade Representative has statutory authority to take action to address unreasonable or discriminatory acts, policies, or practices, subject to any direction by the President. This rulemaking focuses on actions taken under Section 232,[5] Section 201,[6] and Section 301[7] and will refer to these actions collectively as ''specified trade or national security actions.'' Currently, merchandise provided for in any absolute or tariff-rate quota, whether the quota is open or closed, and merchandise subject to antidumping and countervailing duties are not eligible for the administrative exemption under Section 321(a)(2)(C).[8] However, merchandise subject to specified trade or national security actions imposing an *ad valorem* tariff is currently eligible to claim this administrative exemption.

Section 232 authorizes the President to adjust the imports of an article and its derivatives, if the Secretary of Commerce finds that the article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.[9] For example, beginning in 2018, the President imposed *ad valorem* tariffs, absolute quotas, and tariff-rate quotas on steel mill articles and on aluminum articles from almost all countries, pursuant to this authority.[10]

Section 201 provides that, if the U.S. International Trade Commission determines that a good is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a good like or directly competitive with the imported good, then the President is authorized to take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition (*i.e.,* safeguards).[11] These actions include imposing temporary duties and other trade measures. For example, in 2018, the United States imposed an *ad valorem* tariff and tariff-rate quota on certain crystalline silicon photovoltaic

[3] The procedures for low-value shipments imported by mail are not implicated in this proposed rulemaking.

[4] For a more detailed discussion of these challenges, please see the ELVS NPRM. 90 FR 3048.

[5] Section 232 of the Trade Expansion Act of 1962, as amended (Section 232); 19 U.S.C. 1862, Public Law 87–794, 76 Stat. 872.

[6] Section 201 of the Trade Act of 1974 (Section 201); 19 U.S.C. 2251 *et seq.,* Public Law 93–618, 88 Stat.1978.

[7] Title III of the Trade Act of 1974 (Section 301); 19 U.S.C. 2411–2420, Public Law 93–618, 88 Stat.1978 (as amended).

[8] *See* 19 CFR 10.153(g) and 19 U.S.C. 1671h and 1673g.

[9] 19 U.S.C. 1862.

[10] *See* 83 FR 11625 (March 15, 2018) and 83 FR 11619 (March 15, 2018), as amended. Effective February 8, 2022, the United States also imposed *ad valorem* tariffs on imports of aluminum derivative articles and steel derivative articles into the United States under section 232 of the Trade Expansion Act of 1962. *See* 85 FR 5281 (January 24, 2020), as amended.

[11] 19 U.S.C. 2251, *et seq.*

cells, whether partially or fully assembled into other products, pursuant to this authority.[12]

Section 301 allows USTR to address, among others, unreasonable or discriminatory acts, policies, or practices that burden or restrict U.S. commerce. Actions may include suspending trade agreement concessions or imposing import restrictions, subject to the specific direction of the President, if USTR determines that a trading partner of the United States is violating trade agreement commitments or engaging in discriminatory or unreasonable practices that burden or restrict U.S. commerce.[13] For example, the United States has imposed an additional *ad valorem* tariff on many products from China because China employs a series of technology transfer-related acts, policies, and practices that are unreasonable or discriminatory and burden or restrict U.S. commerce pursuant to this authority.[14]

Collectively, these trade or national security statutes empower the President, or USTR, in consultation with designated agencies, to enforce U.S. trade or national security objectives with respect to certain imported merchandise by, among other actions, imposing an *ad valorem* tariff in addition to the standard applicable duty rate.

C. Excepting Merchandise Subject to Specified Trade or National Security Actions From Eligibility for the Administrative Exemption

To uphold the objectives of the specified trade or national security actions discussed above, and consistent with the purpose of Section 321(a), to protect the revenue, and prevent unlawful importations, this rulemaking proposes to except merchandise subject to an *ad valorem* tariff imposed under Section 232, 201, or 301 from eligibility for the exemption under Section 321(a)(2)(C). The Secretary of the Treasury is authorized by 19 U.S.C. 1321(b) to prescribe such exceptions to any administrative exemption.

These specified trade or national security actions are meant to prevent specific harms such as the threat of certain imports to national security or domestic industries or to respond to discriminatory or unreasonable practices that restrict or burden U.S. commerce. Thus, any Government expense involved in the collection of these additional duties is outweighed by the fact that continuing to exempt these goods would undermine the statutory scheme for trade or national security actions generally and the effectiveness of specific actions that are currently in force. Further, creating this exception would ensure that administrative exemption eligibility for products covered by the specified trade or national security actions is consistent with treatment under other U.S. trade laws. For instance, products covered by antidumping or countervailing duty orders are already excepted from eligibility for the administrative exemption under 19 U.S.C. 1321(a)(2)(C).[15]

Merchandise that would be ineligible to claim the administrative exemption under this rulemaking may continue to be entered under an appropriate formal or informal entry process to ensure collection of any applicable tariff. For purposes of ensuring merchandise subject to additional tariffs imposed pursuant to a specified trade or national security action is not accorded duty-free entry under Section 321(a)(2)(C), this rulemaking additionally proposes to require a 10-digit HTSUS classification for merchandise entered under the proposed ''basic entry process'' claiming an exemption under Section 321(a)(2)(C), in addition to the proposed requirement to provide the 10-digit HTSUS classification for merchandise entered under the ''enhanced entry process'' that was proposed in the ELVS NRPM. Provision of the 10-digit HTSUS classification at entry enables CBP to determine whether the merchandise is subject to *ad valorem* tariffs as a result of a specified trade or national security action, and therefore whether the merchandise is eligible for the administrative exemption.

The proposed exception applies to all merchandise identified in a specified trade or national security action imposing an *ad valorem* tariff, even if the merchandise is accorded an exclusion from the *ad valorem* tariff imposed by a specific action.[16] CBP's proposal does not affect exclusions for purposes of determining whether an *ad valorem* trade or national security action tariff is applicable at entry. Merchandise accorded an exclusion may continue to be entered under an appropriate formal or informal entry process without being subject to the *ad valorem* tariff, that would otherwise apply had the exclusion not been accorded, consistent with all applicable requirements. Products that are not subject to the *ad valorem* tariff imposed by a specified trade or national security action, as detailed in each action, remain eligible for the exemption under Section 321(a)(2)(C). For example, in recently issued Presidential Proclamation 10782, imports of aluminum from Mexico are not subject to the *ad valorem* tariff imposed pursuant to Section 232 if the article meets specified criteria.[17]

The proposal to make merchandise subject to specified trade or national security actions ineligible for the administrative exemption under Section 321(a)(2)(C) is consistent with the purpose of Section 321(a) and is necessary to protect the revenue. The rate of duty for merchandise subject to additional Section 232, 201 and 301 duties is higher than the rate applicable to merchandise subject to regular rates of duty (that is, most-favored-nation rates or rates under trade agreements or preference programs). Currently, the standard duty rate assessed on imported merchandise, on average, is less than 2 percent for goods subject to regular rates of duty. In comparison, the additional Section 301 *ad valorem* tariff rate assessed on certain goods from China currently ranges from 7.5 percent to 100 percent, the Section 201 tariff rate on certain solar cells is an additional 14.25 percent, and the Section 232 tariff rate is an additional 10 percent for aluminum and an additional 25 percent for steel mill articles.

As described in the Regulatory Flexibility Act section, when the standard duty rate is combined with the tariff rate applied to the aggregate value of imported merchandise subject to an *ad valorem* tariff under Section 232, 201 and 301, the total amount of additional revenue to be collected on merchandise subject to these trade or national security actions is projected to range between $5.9 billion and $7.8 billion in 2025. Considering the rates of duties and the aggregate trade volume of affected imports, CBP anticipates that the amount of additional revenue to be collected under the proposed exception would substantially outweigh the expense and inconvenience to the U.S. Government of collecting the duties.

[12] *See, e.g.,* 83 FR 3541 (January 23, 2018). For additional information on actions taken under Section 201, please refer to *https://ustr.gov/issue-areas/enforcement/section-201-investigations* (last visited November 7, 2024).

[13] 19 U.S.C. 2411–2420.

[14] *See, e.g.,* 83 FR 28710 (June 20, 2018). For additional information on actions taken under Section 301, please refer to: *https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions* (last visited November 7, 2024).

[15] *See* 19 U.S.C. 1671h; 19 U.S.C. 1673g (requiring CBP to collect antidumping and countervailing duty deposits for ''*all* entries, or withdrawals from warehouse, for consumption of merchandise subject to [an antidumping or countervailing duty] order'') (emphasis added).

[16] CBP notes that merchandise subject to either an absolute or tariff-rate quota is already ineligible for the administrative exemption pursuant to 19 CFR 10.153(g). As a result, CBP is not discussing these quotas further in this NPRM.

[17] *See* 89 FR 57339 (July 10, 2024).

Thus, making goods subject to *ad valorem* tariffs pursuant to these trade or national security actions ineligible for the administrative exemption is consistent with the purpose of Section 321(a), because the amount of revenue to be collected on goods subject to *ad valorem* tariffs pursuant to these trade or national security actions is substantial enough to outweigh the expense and inconvenience to the government of processing the low-value shipments. Moreover, creating an exception for goods subject to *ad valorem* tariffs pursuant to these trade or national security actions protects the revenue because failing to collect these duties represents a substantial loss of revenue to the U.S. Government.

The above proposal also serves to prevent unlawful importations. As noted above, over the last 10 years, the number of shipments entering the United States claiming the administrative exemption has increased significantly, from approximately 139 million a year in 2015 to over one billion a year in 2024. Even though these shipments have a low value, this significant increase in volume makes it more challenging for CBP to conduct targeting for purposes of, among other things, identifying violations of U.S. trade laws, health and safety requirements, intellectual property rights, and consumer protection rules, and to block illicit synthetic drugs such as fentanyl and synthetic drug raw materials and related manufacturing equipment from entering the country. Such enforcement challenges put American consumers at risk. CBP anticipates that excepting merchandise subject to *ad valorem* tariffs pursuant to specified trade or national security actions from eligibility for the administrative exemption will result in a decrease in the overall volume of shipments claiming this exemption. CBP expects that shipments of ineligible merchandise will be consolidated into larger shipments and entered under an appropriate formal or informal entry process, resulting in decreased overall volume of shipments.

D. Unique Considerations for Applicability to the International Mail Shipments

While CBP has included international mail in the scope of this proposed rulemaking, CBP seeks public comments that address the operational feasibility in the international mail environment. The U.S. Postal Service (USPS) has committed to provide comments as part of the rulemaking record. This approach seeks to determine whether there are sufficient reasons why postal shipments can and should be treated differently, and those differences are best addressed as the rulemaking moves forward with input from the USPS and the public.

The reasons postal shipments may require a different approach in the proposed rulemaking include the following: (1) the USPS is subject to universal service obligations to deliver international mail and other constraints under both international agreements and domestic law, which create unique challenges to the application of the proposed rule to international mail; (2) international mail operates differently from other modes of global commerce, including that international postal shipments do not benefit from an end-to-end process as do commercial shipments; (3) the overwhelming majority of international mail consists of low-value shipments and the USPS typically cannot collect duties directly from the foreign mailers with whom it has no relationship; and (4) as a result of these operational considerations, the application of this proposed rulemaking may create substantial unrecoverable financial costs for the USPS, which would be inconsistent with the legal obligation of the USPS to operate in a financially self-sufficient manner.

Further, if CBP decides to exclude international mail from the scope of a final rule, the agency would intend to address the trade remedies and national security loophole for de minimis goods through additional rulemaking tailored to the unique operational and legal characteristics of the international mail environment.

III. Discussion of Proposed Amendments

This rulemaking proposes amendments to provisions found in 19 CFR parts 10, 128, and 143. Because CBP has also proposed amendments to the same provisions in the ELVS NPRM, the regulatory amendments proposed in this section are amendments of the regulations as proposed in the ELVS NPRM. See 90 FR 3048.[18]

CBP proposes an amendment to 19 CFR part 10 that would make merchandise subject to an *ad valorem* tariff under Sections 232, 201 and 301 ineligible for the exemption under Section 321(a)(2)(C). Part 10, among other things, implements in CBP regulations the statutorily authorized administrative exemption for low-value shipments, and lists the conditions that must be met to qualify for the exemption. Section 10.153 identifies exceptions to the administrative exemption. The ELVS NPRM proposes to amend § 10.153 by adding a new paragraph (i), which tracks the existing statutory exception to eligibility for merchandise subject to antidumping and countervailing duties. In this present notice of proposed rulemaking, CBP proposes to further amend this section to add an additional new paragraph (j), providing that imported merchandise subject to actions imposing additional duties pursuant to Section 232, Section 201, or Section 301 are also ineligible for the administrative exemption.

CBP additionally proposes amendments to 19 CFR parts 128 and 143, to require a 10-digit HTSUS classification for all merchandise entered under the proposed basic entry process as described in the ELVS NPRM. As a result of these proposed amendments, a 10-digit HTSUS classification would be required under both the proposed basic and enhanced entry process described in the ELVS NPRM. By requiring a 10-digit HTSUS classification for entries using either the proposed basic or enhanced process, CBP will have additional data needed to corroborate the product description that would also be required for all basic and enhanced entries. This HTSUS classification assists CBP in determining eligibility for the administrative exemption, including whether merchandise is subject to specified trade or national security actions, as well as assisting with administration and enforcement more generally. Therefore, CBP is proposing to amend 19 CFR part 128, by adding this classification requirement to § 128.21(a)(4)(ii), as proposed in the ELVS NPRM, and part 143, by adding this requirement to § 143.23(k), as proposed in the ELVS NPRM.

Part 128, subpart C, sets forth requirements and procedures for the clearance of imported merchandise carried by express consignment operators and carriers, including couriers, under special procedures. Current § 128.21(a) lists the manifest information required in advance of the arrival of all express consignment cargo. The ELVS NPRM proposed to amend § 128.21(a)(4)(ii) to explain that the HTSUS subheading number would not be required for low-value shipments entered under the basic entry process in § 143.23(k). However, given that this notice of proposed rulemaking now proposes to extend this HTSUS subheading number reporting requirement to the basic entry process, CBP now proposes to amend § 128.21(a)(4)(ii) to make clear that the

[18] CBP will take into account all public comments on the ELVS NPRM and will adjust this rulemaking's language as appropriate.

HTSUS subheading number is required for shipments claiming the administrative exemption entered under either the basic entry process, as proposed in § 143.23(k) of the ELVS NPRM, or the enhanced entry process, as proposed in § 143.23(l) of the ELVS NPRM.

Part 143, subpart C, sets forth the requirements for the clearance of imported merchandise under informal entry procedures. In the ELVS NPRM, CBP proposed to amend the current release from manifest process described in current § 143.23(j) and (k). The ELVS NPRM consolidates the general requirements for the basic entry process in proposed § 143.23(k). CBP is proposing to further amend paragraph (k) by adding the 10-digit HTSUS classification as a required data element that must be provided for all shipments entered using the basic or enhanced entry processes proposed in the ELVS NPRM.

IV. Statutory and Regulatory Reviews

A. Executive Orders 12866 and 13563

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This rule is a ''significant regulatory action'' that is economically significant under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094, because the rule would have an annual effect of $200 million or more during at least one year of the analysis. A regulatory impact analysis (RIA), entitled Trade and National Security Actions and Low-Value Shipments (TraNSALS) Regulatory Analysis and Regulatory Flexibility Analysis, has been included in the docket of this rulemaking USCBP–2025–0003. The following presents a summary of the aforementioned regulatory impact analysis. Although this analysis attempts to mirror the terms and wording of the rule, no attempt is made to precisely replicate the regulatory language and readers are cautioned that the actual finalized regulatory text, not the text of this assessment, is binding.

1. Purpose of the Rule

This proposed rule makes merchandise subject to an *ad valorem* tariff pursuant to a trade or national security action under Section 232, 201, or 301 ineligible for the administrative exemption in 19 U.S.C. 1321(a)(2)(C). The administrative exemption allows shipments of merchandise to be imported by one person on one day to pass free of duty and tax imposed on or by reason of importation if the aggregate fair retail value in the country of shipment does not exceed $800, and the shipment is not covered by a single order or contract but sent in a separate lot to secure duty-free treatment. Throughout this analysis, we refer to low-value shipments that qualify for the administrative exemption in 19 U.S.C. 1321(a)(2)(C) as ''qualifying low-value shipments.'' For fiscal year 2023, CBP estimates that hundreds of thousands of qualifying low-value shipments would have been assessed additional tariffs owed under Section 232, 201, or 301, had they not claimed the administrative exemption. By allowing these low-value shipments to be imported without assessment of the additional duties owed pursuant to an applicable trade or national security action, the administrative exemption is undermining the United States' trade and national security actions. Additionally, low-value shipment volumes have grown rapidly in recent years, rising from approximately 139 million to over 1 billion shipments per year between fiscal years 2015 and 2023.[19] This overwhelming volume has created operational inefficiencies for CBP's inspection of low-value shipments for compliance with U.S. laws and regulations. CBP anticipates that this rulemaking would increase tariff revenue, reduce the volume of qualifying low-value shipments, improve effectiveness of specified trade and national security actions, and thereby increase the efficiency with which CBP targets imports for security risks.

2. Need for the Proposed Rule

The Trade Expansion Act of 1962 and the Trade Act of 1974 authorize the President and USTR to impose tariffs in certain circumstances. Specifically, as relevant to this proposed rulemaking, Section 232 of the Trade Expansion Act of 1962 authorizes the President to adjust imports of an article and its derivatives if the Secretary of Commerce finds that the article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security. Section 201 of the Trade Act of 1974 authorizes the President to impose temporary trade measures if the International Trade Commission finds that an article is being imported in such increased quantities as to be a ''substantial cause of serious injury or the threat thereof'' to U.S. industries. Lastly, Section 301 of the Trade Act of 1974 authorizes USTR, subject to the direction of the President, if any, to impose import restrictions to address, among other things, unreasonable or discriminatory acts, policies, or practices that burden or restrict U.S. commerce. This proposed rulemaking refers to tariffs imposed under Section 232, 201, or 301 as ''specified trade or national security actions.''

These specified trade or national security actions are designed to protect domestic industries, and to address the harm to domestic industry and the American public from substantial cause of serious injury or threat thereof from surges of injurious imports and unreasonable or discriminatory trade practices, and may in turn encourage foreign governments to eliminate policies that gave rise to the action, or to address the threatened impairment of U.S. national security caused by certain imports. However, some merchandise subject to specified trade or national security actions may also be eligible for the administrative exemption pursuant to Section 321 of the Trade Act of 1930, as amended (19 U.S.C. 1321(a)(2)). Section 321 provides administrative exemptions from duty and taxes that are imposed upon or by reason of importation for three categories of imported articles:

- Certain bona-fide gifts valued at $100 or less ($200, if the gift was from certain island possessions) sent from persons in foreign countries to persons in the United States;
- Certain personal or household articles valued at $200 or less accompanying persons arriving in the United States; and
- All other imported articles when the aggregate fair retail value of the articles in the country of shipment is $800 or less.

This proposed rulemaking only concerns shipments in the third category, which is covered by the administrative exemption in 19 U.S.C. 1321(a)(2)(C). To avoid confusion with the other two administrative exemptions, we will refer to this exemption alone as the ''administrative

[19] Data pulled from CBP's Automated Targeting System (ATS) database.

exemption.'' Specifically, the administrative exemption allows a shipment to be imported duty-free when the aggregate fair retail value in the country of shipment of all articles imported by one person on the same day and exempted from the payment of duty is less than or equal to $800. This administrative exemption was originally set at $1 in the Customs Administrative Act of 1938 to limit the ''expense and inconvenience'' of collecting duty when it was a disproportionate amount of work by the U.S. Government compared to the amount of revenue that would be collected. Since its inception, Congress has increased the daily aggregate value cap to $5 in 1978, $200 in 1993, and $800 in 2016. In recent years, the volume of imports subject to *ad valorem* tariffs as a result of specified trade or national security actions under Sections 232, 201, and 301 has increased, but low-value shipments qualifying for the administrative exemption are permitted to enter duty-free, even when subject to additional duties pursuant to these actions. Thus, the administrative exemption dampens the impact of specified trade or national security actions by allowing low-value imports that claim the exemption to legally avoid all duties and taxes imposed upon or by reason of importation that would otherwise be collected, including the additional duties collected under specified trade and national security actions. In fiscal year 2023, an estimated 77 percent of shipments claiming the administrative exemption would have been assessed additional duties under Section 232, 201, or 301 had they not claimed the administrative exemption.[20]

Additionally, low-value shipments create operational inefficiencies for CBP's ability to inspect these goods due to their high volumes and more limited data requirements. The volume of shipments claiming the administrative exemption has risen sharply from approximately 139 million in fiscal year 2015 (prior to the increase in the daily aggregate exempted value cap) to 1 billion shipments per year in fiscal year 2023.[21] In 2019, CBP implemented the Entry Type 86 Test (84 FR 40079; subsequently amended in 89 FR 2630), which created a new electronic process for filing entries of qualifying low-value shipments in the Automated Commercial Environment (ACE), as a voluntary alternative to the current regulatory ''release from manifest'' process under parts 128 and 143 of the CBP regulations. Under this test, an owner, purchaser, or customs broker appointed by an owner, purchaser, or consignee may file an entry type 86 through ACE for shipments claiming the administrative exemption. Ten data elements are required to be transmitted to CBP as part of the entry, including the 10-digit HTSUS classification for the imported merchandise. The Entry Type 86 Test facilitates the clearance of compliant low-value shipments into the United States through the filing of an electronic entry in ACE, to include the submission of partner government agency (PGA) data, which expedites release. While Entry Type 86 has sped up processing for many shipments claiming the administrative exemption, the remaining shipments entered under the current regulatory ''release from manifest'' process [22] may require manual clearance and provide CBP with more limited data. CBP anticipates that this rulemaking would reduce the volume of shipments claiming the administrative exemption and thereby increase the efficiency with which CBP targets imports for security risks, including curbing the smuggling of illegal opioids such as heroin and fentanyl, by shifting some shipments to other entry types that require more data and the use of an authorized broker.

3. Summary of Proposed Rule

In this proposed rule, CBP proposes to make all goods subject to trade or national security actions under Sections 232, 201, and 301 ineligible for the administrative exemption. As a result, importers of such goods would have to pay both the standard duties and any additional duties imposed pursuant to trade and national security actions under Sections 232, 201, and 301, even when the entry value is under $800; shipments containing such goods would instead need to be entered through an alternative entry type. CBP assumes that filers will use entry type 11 (another informal entry type) or entry type 01 (a formal entry type), depending on the value of the merchandise.[23] To enable CBP to determine whether merchandise is eligible for the administrative exemption, CBP proposes to collect the 10-digit HTSUS classification as part of the basic as well as the enhanced processes, as described in the ELVS NPRM. This is a proposed modification of the ELVS NPRM, which did not propose to require the 10-digit HTSUS classification as part of the data required for entry under the basic entry process.[24] In the ELVS NPRM, CBP proposed to only require the 10-digit HTSUS classification of the merchandise to be provided as part of the enhanced entry process (subject to waiver in certain circumstances subject to specified conditions).[25] This Trade and National Security Actions and Low-Value Shipments NPRM would expand that HTSUS classification reporting requirement to include shipments claiming the administrative exemption under the basic entry process.

The proposed rule would strengthen the United States' specified trade and national security actions, especially for Section 301 tariffs. For example, the goal of the current Section 301 action is to discourage China's acts, policies, and practices related to technology transfer, intellectual property, and innovation that burden or restrict U.S. commerce. Additionally, the specified trade or national security actions can be used to protect domestic industries from serious injury, or the threat thereof, by import surges or adjust imports that threaten to impair the national security. Moreover, enforcement of U.S. trade laws and US trading rights protects domestic industries and workers from unfairly traded imports. An industry that is particularly vulnerable to circumvention by qualifying low-value shipments from China is the U.S. textile and apparel manufacturing industry. A large volume of Chinese textile and apparel imports claim the administrative exemption, thereby avoiding tariffs. Further, approximately

[20] Our estimate is based on a random sample of 6,238,513 ET86 entries from fiscal year 2023, pulled from CBP's ACE database. We assume that qualifying low-value shipments cleared off the manifest are as likely as type 86 entries (a test which created a new electronic informal entry process for filing qualifying low-value shipments in ACE (84 FR 40079)) to be covered by additional Section 232, 201, or 301 tariffs.

[21] Data pulled from CBP's Automated Targeting System (ATS) database.

[22] The ''release from manifest'' process describes shipments claiming an exemption under 19 U.S.C. 1321(a)(2)(C) which are released from CBP custody based on the information provided on the manifest or bill of lading, 19 CFR 128.24(e) and 143.23(j)(3)–(k). *See* 84 FR 40079, 40080 (Aug. 13, 2019); 89 FR 2630, 2631 (Jan. 16, 2024).

[23] While other entry types are available, they comprise a minor portion of total entries. Because type 01 and 11 entries are most common, we assume these are the most likely types that will be employed for shipments that no longer qualify for the administrative exemption.

[24] The ''basic entry process,'' as described in the ELVS NPRM is largely the same as what is known as the ''release from manifest'' process currently in use but with minor changes to certain data elements. Detailed information about those proposed data element changes can be found in the Entry of Low-Value Shipment NPRM.

[25] The proposed ELVS rule would allow entry filers to apply for a waiver privilege (*i.e.,* a ''waiver'') from the requirement to transmit the HTSUS as part of an enhanced entry for non-PGA related goods. To obtain a waiver, the filers meet several criteria generally demonstrating their ability to properly classify merchandise, determine whether the merchandise is subject to the requirements of partner government agencies (PGAs), or otherwise precluded by law from eligibility for the administrative exemption.

50 percent of the value of current qualifying low-value shipments is attributed to textiles and apparel that would otherwise be subject to additional duties under Section 301. Broadly speaking, an estimated 15.9 percent of total imports covered by Section 232, 201, and 301 tariffs are exempt from the tariffs as a result of claiming the administrative exemption.[26] By excepting imported goods that are subject to additional duties imposed under Section 232, 201, and 301 actions from the administrative exemption under 19 U.S.C. 1321(a)(2)(C), CBP would increase the effectiveness of these specified trade or national security actions. This proposed rule would further help protect domestic industries and discourage unreasonable or discriminatory practices, among other things, by other countries.

This rule would also increase CBP's inspection efficiency by shifting a large volume of shipments that would become ineligible to claim the administrative exemption into alternative entry types, such as formal type 01 and informal type 11 entries. Low-value shipments claiming the administrative exemption are currently more challenging for CBP to efficiently inspect than other entry types because they arrive with more limited data. As a result, CBP officers must do more work to ensure that a low-value shipment is admissible and to determine whether the shipment is eligible for the administrative exemption, which is often impossible without physical inspection of the shipment. Shipments entered using type 01 or 11 entries, in contrast, arrive with more detailed information about the contents of the goods included in the shipment, increasing CBP's inspection efficiencies.

Furthermore, shifting shipments that will become ineligible for the administrative exemption to an alternative entry type, such as type 01 formal or type 11 informal entry, is likely to result in the consolidation of multiple, similar items into a single shipment.[27] Specifically, the $800 daily aggregate value limit for shipments claiming the administrative exemption incentivizes importers to de-consolidate goods into numerous low-value shipments to avoid paying tariffs. Absent the ability to avoid tariffs, importers are likely to be incentivized to reduce per-unit shipping costs by consolidating items in bulk shipments.[28] This consolidation results in fewer, higher value entries, where multiple identical items can be reviewed by CBP officers at the same time. Consolidation of non-identical items is also possible and could result in savings if they are from the same shipper or origin or have other similar characteristics. However, for the purposes of this analysis, we focus on the consolidation of similar or identical goods, because that is where there are the clearest savings for both trade members and CBP.

Finally, the proposed rule is likely to improve CBP's ability to accurately identify the contents of a shipment claiming the administrative exemption even if it does not contain goods subject to an *ad valorem* tariff as a result of a trade or national security action under Section 232, 201, or 301. Many of these goods currently use the ''release from manifest'' entry process, and absent this rule, would use the basic entry process if the ELVS NPRM is finalized. The ''release from manifest'' process (or its proposed modification into the ''basic entry process'' as described in the ELVS NPRM) is less costly for importers, because less information is submitted to CBP, but the release of shipments by CBP is slower, averaging 3 days.[29] In contrast, shipments using type 01 or 11 entries, or the current Entry Type 86 Test (or its proposed modification into the ''enhanced entry process'' as described in the ELVS NPRM), are typically released by CBP within 1 day. This proposed rule would require a 10-digit HTSUS classification under both the basic and enhanced entry process. As a result, importers will likely opt for enhanced entry, with its faster clearance times, given that the difference in administrative costs between the basic and enhanced entry processes will become negligible. Having the HTSUS classification along with several additional data elements required for enhanced entry under the ELVS NPRM will improve CBP's targeting abilities.[30]

4. Proposed Rule Benefits, Costs and Transfers

Analytic Baseline

This analysis estimates the benefits, costs, and transfers anticipated for a 10-year period beginning in 2025, the expected year of rule implementation. Estimating these effects requires defining and modeling a baseline scenario that reflects the world without the proposed regulation. By comparing the baseline, or ''world without the regulation,'' to the ''world with the regulation,'' analysts can characterize the incremental effects of the regulation. The baseline scenario is forward-looking, in that it projects what the world would look like, in the future, absent the new regulation. We make three key assumptions related to the baseline scenario:

- *Shipment modes and entry types:* We assume that in the future, absent this proposed rule, shipments would continue to be entered into the United States in the same proportions (by shipment mode and entry type) as in 2023. These entries are predominantly commercial non-express type 86 entries (58 percent), followed by manifest express entries (17 percent), manifest commercial non-express (16 percent), postal (8 percent), and express type 86 entries (1 percent).
- *Low-value shipment growth:* We assume the total value of qualifying low-value shipments in 2026 through 2034 grows at the rate of projected GDP growth over the same period. We note that this assumption is highly uncertain. Since 2016, when Congress increased the administrative exemption limit to $800, the volume of qualifying low-value shipments has increased exponentially, with shipments from

[26] See Chapter 5 of standalone RIA for sources and estimation method.

[27] We acknowledge that consolidation may not be possible for all qualifying low-value shipments. For a discussion of which shipments might be consolidated see Exhibit 3–5 of the standalone RIA.

[28] For example, imagine a retailer sells 10,000 identical shirts manufactured in China via an eCommerce platform, and each shirt has a value of $10. Packaging each shirt individually at a factory or distribution center in China for direct delivery to the final consumer in the United States allows filers to claim the administrative exemption on behalf of the final consignee (*i.e.,* the consumer). Absent this administrative exemption, the retailer must pay the tariff based on the value of each shirt as well as a filing fee for each individual shipment. If the retailer chooses instead to ship all 10,000 shirts as a single line item in a bulk shipment to an existing distribution center in the United States, the total tariff payment is the same, but the filing fee is orders of magnitude smaller because it is only paid once (rather than 10,000 times). The shirts can then be packaged in the United States for individual delivery to the final customer. Retailers will make strategic decisions about how to import goods affected by this rule based on a variety of factors including filing fees; the relative costs of using foreign or domestic distribution centers; the costs in terms of money and time associated with slower, lower-priced ocean freight (bulk containers) versus faster, higher-priced air freight (individual packets); inventory management costs; etc.

[29] See the ELVS Regulatory Analysis supporting the NPRM.

[30] ELVS proposes to require a CTIN, the country of shipment of the merchandise, the 10-digit HTSUS for all enhanced entries. ELVS also proposes to require enhanced entries to include a URL, product picture, product identifier, and/or a shipment x-ray or other security screening report number verifying completion of foreign security scanning of the shipment. The seller name and address, purchaser name and address, any data or documents required by other government agencies, advertised retail product description, and marketplace name and website or phone number are proposed to be required for enhanced entries as they are applicable.

China the primary contributor to this growth. We assess the sensitivity of our results to alternative growth assumptions.

• *Entry of Low-Value Shipments (ELVS) Rule:* CBP has published a Notice of Proposed Rulemaking proposing the ELVS rule, which would replace the existing Entry Type 86 Test with a new entry process (''enhanced entry'') providing expedited clearance for qualifying low-value shipments. For the purposes of this analysis, we assume that the final ELVS rule will be published and implemented in advance of the Trade and National Security Action final rule. If it is not, this analysis will be revised as necessary in the final rule.

Incremental Costs and Transfers

We model costs and transfers from the proposed rule using a partial equilibrium analysis for industry-level qualifying low-value imports from 2025 to 2034. The primary costs of the proposed rule are consumer surplus losses resulting from increased duties and possibly increased processing fees, resulting in higher prices for imported goods paid by U.S. consumers on imported goods.[31] [32] Under the proposed rule, importers are required to pay tariffs on all goods subject to an *ad valorem* tariff pursuant to Section 232, 201, or 301, and some shipments are subject to additional fees. Our analysis focuses only on goods that would be subject to Section 301 tariffs absent the administrative exemption. Data shows that 0.1 percent of goods (by value) that entered using ET86 in FY 2023 had HTSUS codes subject to Section 232 or 201 tariffs. The resulting price increases lead to higher equilibrium duty-inclusive prices and reduced imported quantities, leading to a decline in consumer surplus, a measure of welfare that reflects the difference between what a consumer is willing to pay and what the consumer paid for a product.

An important component of consumer surplus loss is the transfer of tariff revenue to the government. Although consumers face higher prices for imported goods, the U.S. government generates tariff revenue on goods that were previously avoiding tariffs by claiming the administrative exemption. The net effect of consumer surplus losses and gain in government tariff revenues is the resulting welfare change under the proposed rule.[33]

Cost Shocks

To model the impact of the proposed rule, we introduce cost shocks comprised of two components: (1) a tariff that will apply to certain goods currently claiming the administrative exemption; and (2) additional fees associated with services provided by licensed customs brokers and CBP staff to process low-value shipments, regardless of whether the shipments remain in the 19 U.S.C. 1321(a)(2)(C) exemption environment or shift to formal type 01 or informal type 11 entry. The tariffs apply on an *ad valorem* basis to affected goods, regardless of whether these goods are shipped individually or as part of larger, consolidated shipments. The weighted average tariff rate for affected low-value shipments across all industries included in the analysis is 21.2 percent. Table 1 presents the weighted average tariff rate by industry for affected low-value shipments.

TABLE 1—WEIGHTED AVERAGE SECTION 301 AND MFN TARIFF RATES BY 3-DIGIT NAICS CODE

NAICS code	NAICS description	Weighted average tariff rate (%)
11	Agriculture, Forestry, Fishing and Hunting	21.8
211	Oil and Gas Extraction	25.0
212	Mining (except Oil and Gas)	25.0
311–312	Food, Beverage and Tobacco Product Manufacturing	12.2
313	Textile Mills	31.2
314	Textile Product Mills	31.0
315	Apparel Manufacturing	21.0
316	Leather and Allied Product Manufacturing	28.3
321–323	Wood, Paper, Printing	21.2
324	Petroleum and Coal Products Manufacturing	26.8
325–326	Chemical, Plastics, Rubber Products Manufacturing	17.8
327	Nonmetallic Mineral Product Manufacturing	23.9
331	Primary Metal Manufacturing	23.1
332	Fabricated Metal Product Manufacturing	25.5
333	Machinery Manufacturing	24.9
334	Computer and Electronic Product Manufacturing	21.0
335	Electrical Equipment, Appliance, and Component Manufacturing	26.4
336	Transportation Equipment Manufacturing	22.8
337–339	Furniture and Miscellaneous Manufacturing	14.1
All Industries		21.2

Source: Data provided by the International Trade Administration (ITA) via email on October 11, 2024.

In contrast to tariff payments, fees are assessed on a per-shipment basis, and thus vary significantly depending on assumptions about the degree to which items are bundled together in larger, consolidated shipments. These fees include: (1) payments to brokers to file and process entries; and (2) the merchandise processing fee (MPF) paid

[31] Consumer surplus is an economic measure of welfare that reflects the difference between what a consumer is willing to pay and what the consumer paid for a product.

[32] In this analysis, we assume the prices experienced by consumers include tariffs and processing fees paid by manufacturers or retailers selling the goods and arranging for their importation and delivery.

[33] We note that this analysis focuses primarily on the overall societal effect of the proposed rule. It does not quantify the potential distributional effects associated with the incidence of the increased prices for affected goods and the incidence of revenue gains associated with the collection of tariff revenue; however, it describes the potential distributional effects of increased prices qualitatively in Section 3.4 and Appendix A. Forecasting how the tariff revenue may be returned to the U.S. population (*e.g.,* through tax cuts or other policy options) is beyond the scope of this effort. If tax cuts are selected, additional distributional distortions are possible.

to CBP on all type 01 and 11 entries.[34] Table 2 presents the fees charged by brokers (working with carriers) to file and process entries. Our estimate for the cost of processing an international shipment in the postal environment is $8.55. We do not include the $7.20 dutiable mail fee charged by CBP, which is required when CBP personnel must complete the paperwork for postal shipments themselves, as it is not clear how often CBP personnel would be the ones completing the paperwork. CBP is requesting public comment on the expected costs of processing a shipment in the postal environment, including how often the dutiable mail fee is expected to apply.

TABLE 2—PER SHIPMENT FEES

Type	Fee ($/shipment)
Broker fee: [1]	
Non-express commercial carrier [2]	$1.00
Express commercial carrier [3]	30.00
Postal carrier [3]	8.55
Merchandise Processing Fee (MPF): [4]	
All	2.53

Sources and assumptions:
[1] A licensed broker is not currently required for the ''release from manifest'' entry process, nor would the ELVS NPRM require one for the basic entry process if the ELVS NPRM is finalizes as proposed. We assume for purposes of this analysis that a broker fee is charged for any entry requiring an HTSUS code and is similar regardless of whether the filer uses enhanced entry, entry type 86, 01, or 11. (Source: Personal communication with representatives of a major broker association on 9/26/2024.)
[2] Email from CBP dated 10/11/2024.
[3] Fajgelbaum and Khandelwal (2024).
[4] Minimum merchandise processing fee for informal entries as of October 1, 2023. (As viewed on 10/11/2024 on *https://www.federalregister.gov/documents/2023/07/28/2023-16197/cobra-fees-to-be-adjusted-for-inflation-in-fiscal-year-2024-cbp-dec-23-08*.)

We highlight that these fees are a significant additional cost for many qualifying low-value shipments relative to the overall value of these goods. For example, roughly one-fifth (18.5 percent) of qualifying low-value shipments have a declared value of $5 or less and the majority of these shipments (61.5 percent) have a declared value of $25 or less. Examination of the magnitude of fees relative to the value of shipments currently claiming the administrative exemption, coupled with discussions with representatives of the customs broker and logistics community, suggest that shipment consolidation is a likely outcome of the proposed rule (see chapter 3 in the RIA available in the docket of this rulemaking for additional detail). We evaluate the uncertainty associated with an assumption about the likelihood of consolidation by modeling two separate scenarios, summarized below:

- *Low impact scenario.* We assume that in order to mitigate additional fees, similar or identical Section 301 goods are consolidated into larger, bulk shipments, which would be entered using either entry type 01 or entry type 11 and would be comprised of multiple pieces of identical items.[35] As a result, the only increase in price experienced by consumers of goods subject to Section 301 duties is the duty because all fees are assumed to be fully mitigated.[36] Certain shipments without Section 301 goods are also affected because they must provide an HTSUS code where none was required previously. Non-Section-301 shipments in the express environment using the basic entry process are consolidated to mitigate the fees paid to the broker for filing the entry with the HTSUS (*i.e.,* similar to Section 301 goods, fees are assumed to be negligible, or $0). For express shipments that would use enhanced entry, and therefore already provide HTSUS codes, no change in entry mode occurs. Similarly, because this rule does not require an HTSUS code for postal shipments, postal shipments without Section 301 goods are also unaffected.
- *High impact scenario.* In this scenario, we assume less consolidation occurs. Shipments without Section 301 goods remain qualifying low-value shipments and pay a fee to a customs broker to file the entry with the HTSUS code. The fee ranges from $1 to $30 per shipment, depending on the carrier. Because the affected parties are hiring a broker to file the entry and assign an HTSUS code, they file an enhanced entry, rather than a basic entry.[37] For shipments with Section 301 goods, we assume that the typical business relationship between non-express carriers and their clients supports consolidation of like items as a means of mitigating fees, which would result in these shipments being entered either using entry type 01 or entry type 11 (*i.e.,* net fees, when combined with the potential savings in shipping costs associated with consolidation, are assumed to be negligible, or close to $0). However, we assume Section 301 shipments transported by express carriers and the postal service remain unconsolidated and apply associated per shipment fees (*i.e.,* broker/filing fees range from $8.55 to $30 per shipment, depending on the carrier, plus a MPF of $2.53 per shipment).

[34] Conversations with brokers suggest the MPF for higher-value bulk shipments will be negligible. Therefore, we do not consider the MPF fees explicitly in the analysis.

[35] As noted earlier, we acknowledge that consolidation may not be possible for all qualifying low-value shipments. Thus, this scenario more likely represents a lower-bound estimate of the impacts of the proposed rule.

[36] As discussed in detail in Section 3.3.2 of the standalone RIA, given the high cost of broker fees and MPF relative to the value of items included in qualifying low-value shipments, it is likely that retailers will strategically consolidate shipments in order to negate the impact of these fees. Thus, this low impact scenario considers only the impact of newly applicable tariffs. The impact of additional broker fees and MPF is considered in the high impact scenario.

[37] In this high impact scenario, some shipments are likely to remain as low value shipments and should therefore see faster clearance times resulting from the use of a different filing process. However, as discussed earlier and in Chapter 3 of the standalone RIA, in both the low and high impact scenarios, we anticipate substantial consolidation of individual items in larger, bulk shipments, where they will be sent to U.S. facilities for storage, packaging, and distribution. These items will likely travel by ship, rather than plane, so while they will be cleared through customs more quickly, they will take longer to travel from the foreign port to their U.S. destination (this time cost is offset by substantially lower freight costs associated with ocean freight). On balance, considering all affected shipments, it is difficult to say whether net time savings will occur. For this reason, we do not explicitly quantify potential time-savings or time costs in this analysis.

Results

Results from the partial equilibrium analysis are as follows:

1. *Consumer surplus losses* in 2025 range from $10.0 billion (low scenario) to $18.2 billion (high scenario). These losses are largely explained by higher import prices faced by consumers. In both scenarios, tariffs raise the price of low-value shipments for the consumer. In the high scenario, these price increases are heightened due to broker fees and MPF applicable to many shipments. In addition, consumers experience a welfare loss associated with a reduction in import quantities resulting from these price increases.

2. *Tariff revenues increase* in all years relative to the baseline. In 2025, $7.8 billion in tariff revenues are generated in the low scenario, compared with $5.9 billion in the high scenario. Because tariff revenues depend on the value of imported goods, the high scenario generates less revenue as consumer demand falls in response to the additional fees on many shipments.

3. The proposed rule results in *net decreases in welfare* in the low scenario (−$2.2 billion in 2025) and high scenario ($−12.3 billion in 2025).[38] For the 10 years following rule implementation, the present value of these welfare effects is a loss of $21.9 billion in the low scenario and $121.9 billion in the high scenario (assuming a 2 percent real discount rate).[39] The greater impacts in the high scenario result from the additional costs imposed on imported goods in the form of broker fees and merchandise processing fees.[40]

4. *Tariff pass-through*—the rate at which increased tariffs are passed on to consumers through higher prices—is a key parameter that influences all three partial equilibrium outputs presented in this report: consumer surplus, tariff revenues, and net welfare effects. Consistent with recent economic evidence on tariff pass-through, we assume full tariff pass-through to U.S. consumers in our main estimates.[41] That is, consumers bear the full cost of increased tariffs as foreign suppliers do not adjust their supply prices. Given uncertainty in the rate of tariff pass-through, we calculated the ''break-even'' points where the net welfare effects are $0.[42] In the low scenario, pass-through rates greater than 79 percent (including the 100 percent pass-through assumed in our main estimates) result in net welfare losses; lower pass-through rates would result in net welfare gains. In the high scenario, this break-even point is roughly 35 percent. In other words, if foreign producers reduce their prices by an amount equal to 21 percent of the tariff increase in the low scenario, or 65 percent of the tariff increase in the high scenario, consumer surplus losses are offset by increased tariff revenue.[43] [44]

5. Impacts are largely concentrated among qualifying low-value shipments containing Section 301 goods, which are subject to tariffs under the proposed rule. In the high scenario, we estimate additional costs for a subset of qualifying low-value shipments not containing Section 301 goods, which may be subject to additional broker fees to comply with the rule's requirements to provide HTSUS codes.

6. Apparel manufacturing comprises the majority (51.4 percent) of the value of qualifying low-value shipments. While the effects of the rule on each industry are not exactly proportional to its share of imports (due to differing demand elasticities and tariffs in each sector), the effects are concentrated among few industries comprising most affected imports.

7. *Distributional considerations:* While data limitations hindered our ability to examine how the proposed rule may disproportionately impact some consumers, Fajgelbaum and Khandelwal (2024)[45] provide evidence that eliminating the administrative exemption entirely would disproportionately affect lower-income and minority consumers. In their paper, the authors explain that direct-to-consumer imports comprise a higher share of household spending for zip codes with lower incomes and lower shares of white households. Their analysis finds that consumers in the poorest zip codes lose 24.8 percent more consumer surplus than the representative consumer. In Appendix A in the standalone RIA, we provide additional detail on this study and its

[38] As discussed in Point #7, these losses are likely to be regressive in nature, disproportionately affecting low-income and minority consumers.

[39] OMB Circular No. A–4 (2023) requires agencies to estimate the present value and annualized impacts of a proposed rule by applying a 2 percent real discount rate.

[40] We note that our estimate of the net effect of changes in consumer surplus and tariff revenue does not explicitly measure potential changes in producer surplus. The direction and magnitude of bias introduced to the net welfare estimate is uncertain. Please see Section 3.1 for additional discussion.

[41] The historical evidence on tariff pass-through (and the related phenomenon of exchange rate pass-through) has suggested that the benefits from reduced tariffs are only partially passed through to consumers (*i.e.,* foreign suppliers increase their prices in response to the tariff cut). More recent evidence focuses on the effect of the sharp increases in tariffs, primarily hitting Chinese imports, in 2018 to 2019. In this episode, the estimated effects are very different. Fajgelbaum et al. (2020) finds complete pass-through of tariffs to import prices using product-level monthly import and export data from the U.S. Census Bureau, *i.e.,* foreign supplier did not reduce their prices in response to the tariffs. These results are supported by more recent analyses by Chang et al. (2021) and Ma et al. (2021) (as cited in Fajgelbaum and Khandelwal 2021) and Amiti et al. (2020). These studies focus on the price of imported goods at the entry port. Cavallo et al. (2019) employs data from product-level data for several large U.S. retailers and finds tariffs were passed through almost fully to U.S. import prices at the entry port. However, the effects on resulting retail prices were muted, suggesting tariff incidence was largely born by U.S. retailers. Importantly, these studies evaluated the effects of the tariff on all imports, not just qualifying low-value shipments, which comprise a small percentage of imports in each product category. If a comprehensive tariff did not lower supply prices, a tariff affecting only a small percentage of the total is even less likely to lower supply prices. In this analysis, we assume that higher U.S. import prices at the entry port are passed on entirely to U.S. consumers, similar to the assumptions in Fajgelbaum and Khandelwal (2024).

[42] We highlight three reasons why evidence of full pass-through is accompanied by uncertainty. First, analysis of the recent tariff episode is drawn from a relatively short time window before the effects of the global pandemic and supply chain disruptions thoroughly confounded the ability to measure longer run effects carefully. This episode includes elements of what Fajgelbaum and Khandelwal term the ''trade war'' that are important because firms on both sides of the market were experiencing shocks to both supply (via traded inputs) and demand, making identification of the demand effects complicated. Further, a potential reason for complete pass-through of tariffs is that markets are slow to adjust to shocks: prices are locked in by previously negotiated contracts; and consumers of imported goods are slow to find alternative sources of supply. Second, while the recent episodes tend to find complete pass-through for most goods they examine, there is some heterogeneity in the response across firms and product sectors. This no doubt results from differences in market structure, response horizons, and substitution options in both supply and demand. As an example, Fajgelbaum and Khandelwal (2021) emphasizes that this work does not address how tariffs might change the selection of products to be imported, or the possibility that foreign suppliers might downgrade the quality of imported products while holding prices fixed. Finally, it should be said that while the evidence of complete tariff pass-through in the recent episode is very strong, it is also regarded as significantly puzzling and a subject for active research to uncover precisely why foreign supply prices were not more responsive.

[43] It is possible that there will also be an increase in producer surplus. See Section 3.1.

[44] As noted earlier, our analysis focuses primarily on the overall societal effect of the proposed rule. It does not quantify the potential distributional effects associated with the incidence of the increased prices for affected goods and the incidence of revenue gains associated with the collection of tariff revenue; however, it describes the potential distributional effects of increased prices qualitatively in Section 3.4 and Appendix A. If more of the tariff is borne by foreign producers, price increases will be smaller, reducing the disproportionate impact on lower-income consumers. The potential for disproportionate impacts associated with tax policies designed to return tariffs to consumers also exists in such a scenario.

[45] Fajgelbaum, P.D. and A. Khandelwal. (2024). ''The Value of De Minimis Imports.'' National Bureau of Economic Research Working Paper No. 32607.

applicability to our analysis of the proposed rule.

8. *Baseline growth in qualifying low-value imports* is highly uncertain. In our main estimates, we assume that post-2025 growth in qualifying low-value import values follows growth in real GDP. In essence, this implies that the value of qualifying low-value shipments would comprise the same share of overall GDP in each year from 2025 to 2034. Growth in the low-value import sector, however, has considerably outpaced GDP in recent years. As a sensitivity analysis, we present a high-growth scenario assuming 18.4 percent annual increases in qualifying low-value shipment value and associated welfare effects. This percentage corresponds with the growth in total low-value shipment values between 2023 and 2024 and is generally reflective of growth since 2016. The resulting present value of welfare losses over the 10-year analysis period is approximately doubled relative to our main estimates: using a discount rate of 2 percent, we estimate $47.2 billion in net welfare losses in the low scenario and $262.5 billion in net welfare losses in the high scenario. We note, however, that sustaining 18 percent growth in the value of qualifying low-value shipments may be implausible.

Our primary estimates are presented in Table 3. Programming costs to the U.S. government associated with rule implementation are also considered. Over the 10-year period of our analysis, the present value cost of these software changes is approximately $460,000, assuming a discount rate of 2 percent.

TABLE 3—PARTIAL EQUILIBRIUM ANALYSIS RESULTS: 2025–2034 MAIN RESULTS

[$Billions, 2024 dollars]

Year	Low impact scenario			High impact scenario		
	Consumer	Tariff	Welfare	Consumer	Tariff	Welfare
2025	−$10.0	$7.8	−$2.2	−$18.2	$5.9	−$12.3
2026	−10.3	8.0	−2.2	−18.6	6.0	−12.5
2027	−10.5	8.2	−2.3	−18.9	6.2	−12.8
2028	−10.7	8.3	−2.3	−19.3	6.3	−13.0
2029	−10.9	8.5	−2.4	−19.6	6.4	−13.2
2030	−11.0	8.6	−2.4	−19.9	6.5	−13.4
2031	−11.2	8.7	−2.5	−20.3	6.6	−13.7
2032	−11.4	8.9	−2.5	−20.6	6.7	−13.9
2033	−11.6	9.1	−2.5	−21.0	6.8	−14.2
2034	−11.8	9.2	−2.6	−21.4	7.0	−14.4
Total, undiscounted	−109.4	85.4	−24.0	−197.9	64.5	−133.4
Present value, 2% d.r.	−99.9	78.0	−21.9	−180.8	58.9	−121.9
Annualized, 2% d.r.	−10.9	8.5	−2.4	−19.7	6.4	−13.3

Note: Growth in the value of qualifying low-value shipments is assumed to match growth in real GDP from 2025 to 2034. When growth is assumed to match year-over-year growth in low-value shipments since 2016, net welfare losses in the low scenario are estimated at $47.2 billion and $262.5 billion in the high impact scenario.

Incremental Benefits

The proposed rule would preclude goods subject to specified trade or national security actions from claiming the administrative exemption, which would strengthen the effectiveness of the United States' trade and national security actions. Moreover, the change in eligibility for the administrative exemption would significantly reduce the volume of qualifying low-value shipments, and to enforce this change in eligibility for the administrative exemption, CBP would require all low-value shipments entered through basic entry to provide an additional data element. Both the reduction in qualifying low-value shipments and the additional data would improve CBP's ability to identify violative goods and prevent inadmissible merchandise from entering the United States. These benefits are described qualitatively below.

Trade and National Security Actions

First, the proposed rule would strengthen the effectiveness of United States' trade and national security actions. Section 301 tariffs are meant to incentivize changes in foreign governments' acts, policies, or practices. Additionally, specified trade and national security actions can be used to protect U.S. industries from injurious serious injury, or the threat thereof, caused by import surges, unreasonable or discriminatory practices, or adjust imports that threaten to impair national security. Allowing these goods to be imported without assessing the Section 301 tariff that would otherwise be applicable undermines this effort. Excluding these goods from the administrative exemption and requiring additional data will allow CBP officers to assess additional duties, specified in an applicable trade or national security action.

By increasing tariff revenue, this rule would help accomplish the goals of the tariff actions. The largest effect would be on goods subject to Section 301 tariffs. Based on a random sample of 6,238,717 type 86 entries in fiscal year 2023, we estimate that 77 percent of the total value of all ET86 entries covered goods subject to tariffs imposed under Section 301. According to CBP statistics, the total value of all imports claiming the administrative exemption in FY 2023 was $54.6 billion. We assume that the share of the total value of qualifying low-value shipments containing goods subject to Section 301 tariffs was the same for entries entered under the ''release from manifest'' process as compared to type 86 entries. With this assumption, we estimate that the total value of all qualifying low-value shipments that would have been subject to Section 301 tariffs in fiscal year 2023 was $41.1 billion. The total value of type 01 and 11 entries covered by Section 301 tariffs that same year was $215.9 billion. Hence, we estimate that qualifying low-value shipments made up 16.0 percent of the total value of goods covered by Section 301 tariffs. This rule would therefore strengthen the incentive for China to eliminate its acts, policies, and practices related to technology transfer, intellectual property, and innovation that are unreasonable or discriminatory and burden or restrict U.S. commerce.

Targeting of Violative Shipments

In addition to the primary benefit of this regulation, strengthening U.S. trade and national security actions, the proposed rule will also support CBP's efforts to identify and intercept items violating import laws and regulations. The proposed rule would require all shipments claiming the administrative exemption under 19 U.S.C. 1321(a)(2)(C), entered under either the proposed new basic or the proposed new enhanced entry process, to provide a 10-digit HTSUS classification for the merchandise within the shipment. In the absence of the proposed modification to the rule as proposed in the ELVS NPRM, basic entries would not be required to provide 10-digit HTSUS classifications. This additional data element would allow CBP to more effectively target and screen basic entries in order to identify violative shipments (*e.g.,* prohibited items that are not allowed to enter the United States and other items ineligible for entry under the administrative exemption). CBP seizure statistics show that low-value shipments pose a security concern when compared to type 01 and 11 entries. In particular, CBP finds that goods claiming the administrative exemption have higher seizure rates for narcotics, IPR violations, and prohibited items than goods entered through entry type 01 and 11. See Section 5 of the standalone RIA for more details on the security concerns posed by low-value shipments. Imports claiming the administrative exemption made up 87 percent of total seizures in fiscal year 2023.

Macroeconomic and Distributional Effects

We estimate the macro-economic and distributional effects of the proposed rule using USAGE–TERM, a computable general equilibrium (CGE) model of the United States. At its most disaggregate level USAGE–TERM tracks variables like inputs, output, employment, investment, trade, and prices for 513 sectors in 70 regions across the U.S. A summary of the results of the CGE analysis follows:

- In the low impact scenario, we estimate that the average price of imported goods would be 0.29% higher. We estimate that consumer prices would be 0.10% higher in year 1 and 0.12% higher in year 10.
- We estimate consumer welfare losses of $9.5 billion in year 1, shrinking to $6.7 billion in year 10.
- We estimate a decrease in GDP, compared to the baseline, of 0.03% in both year 1 and year 10.
- Sectors that benefit from the proposed rule, like apparel, textiles, and leather, would see job growth. These sectors would employ 5,900 more people in year 1, and 3,900 more people in year 10 compared to the baseline.
- We did not explicitly model the impacts on the logistics and express sectors. To the extent that consumers use more logistics and express services we would expect these sectors to benefit from the proposed rule.
- These job gains, which could be a result of new jobs being created or fewer job separations, would be offset by a net reduction of jobs in other sectors. On net, the U.S. economy would have 97,000 fewer jobs in year 1, due to an increase in job separations and a reduction in new hires. By year 10 the economy would return to full employment.[46]
- In the high impact scenario, we estimate that the average price of imported goods would be 0.51% higher. We estimate consumer prices would be 0.17% higher in year 1 and 0.21% higher in year 10.
- In the high impact scenario, we estimate consumer welfare losses of $16.5 billion in year 1, shrinking to $11.6 billion in year 10.
- We estimate a decrease in GDP, compared to the baseline growth of GDP, compared to the baseline, of 0.06% in year 1 and 0.05% in year 10.
- Sectors that benefit from the proposed rule, like apparel, textiles, and leather, would see job growth. These sectors would employ 9,700 more people in year 1, and 6,400 more people in year 10 compared to the baseline.
- These job gains would be offset by fewer jobs in other sectors. On net, the U.S. economy would have 136,000 fewer jobs in year 1, due to an increase in job separations and a reduction in new hires. By year 10 the economy would return to full employment.

B. Additional Requirements for Regulatory Analysis

Table 4 provides a cost accounting statement for the proposed rule. Estimates correspond to the low-impact scenario based on our understanding that many low-value shipments are likely to be consolidated under the proposed rule to lessen costs associated with fees. Therefore, CBP considers the low-impact scenario as the primary estimate of the impact of this proposed rule.

TABLE 4—A–4 ACCOUNTING STATEMENT FOR THE PROPOSED RULE

Category	Annualized estimate (in 2024 dollars)	Source citation
Benefits		
Monetized benefits	None	RIA, Chapter 5.
Quantified, non-monetized benefits	None.	
Qualitative (unquantified) benefits	Greater enforcement/effectiveness by requiring goods with 232, 201, and 301 duties to utilize entry types subject to duty payment. Improved targeting of violative shipments by requiring certain qualifying low-value shipments to provide HTSUS codes that describe the contents of the entry. In certain cases, CBP estimates that consolidation of shipments would lead to faster merchandise release, enhanced national security and improved health and safety.	
Costs		
Monetized costs	$10.9 billion (low scenario) or $19.7 billion (high scenario) in consumer surplus loss.	RIA, Chapter 3.
Quantified, non-monetized costs	None.	

[46] For context, in 2023, 68.1 million U.S. workers separated from their job, either voluntarily or involuntarily. But in 2023, 70.8 million workers were hired at new jobs, leading to the economy adding about 2.7 million jobs on net. These estimates suggest that if the proposed rule had been first active in 2023, the economy would have added about 2.6 million jobs on net instead.

TABLE 4—A–4 ACCOUNTING STATEMENT FOR THE PROPOSED RULE—Continued

Category	Annualized estimate (in 2024 dollars)	Source citation
Qualitative (unquantified) costs	None.	
Cost Savings Monetized costs	None.	
Quantified, non-monetized cost savings	None.	
Qualitative (unquantified) cost savings	None.	
Transfers		
Monetized budgetary transfers	None	RIA, Chapter 3.
Other monetized transfers	$8.5 billion (low scenario) or $6.4 billion (high scenario) in additional duty revenue, paid for by U.S. consumers assuming full pass-through by foreign producers and returned to consumers to offset consumer surplus loss.	
Distributional Effects		
Effects on State, local, and/or tribal governments.	The proposed rule affects consumers, which could include anyone in the United States, including businesses, not-for-profit organizations, government jurisdictions, as well as individuals. As a result, a substantial number of small entities are likely to be affected. Prices for an individual affected low-value shipment could increase by 12.2 to 31.2 percent, depending on whether only tariffs or tariffs plus broker fees are incurred, the type of carrier transporting the shipment into the United States, and the underlying value of the shipment. Lacking readily-available information describing the number of qualifying low- value shipments and their value imported annually by small entities, CBP cannot certify this rule under the Regulatory Flexibility Act at this time. Instead, it conducts an Initial Regulatory Flexibility Analysis (IRFA).	RIA, Chapter 6.
Effects on small businesses		
Effects on inflation	Inflation increases by between 0.1% and 0.17% in year 1	RIA, Chapter 4.
Effects on growth	GDP growth is 0.03% lower in year 1	RIA, Chapter 4.

Note: Present value calculations use 2025 as the base year. Costs are annualized over 10 years from 2025 to 2034 and reflect a 2 percent discount rate.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et. seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

Under the requirements of the RFA, as amended by SBREFA and Executive Order 13272 entitled ''Proper Consideration of Small Entities in Agency Rulemaking,'' agencies must consider the potential impact of proposed regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules.

Specifically, CBP is required to prepare an RFA analysis and take other steps to assist small entities, unless it certifies that the rule will not have a ''significant economic impact on a substantial number of small entities.'' The Small Business Administration (SBA) provides guidelines on the analytical process used to assess the impact of a particular rulemaking on small entities. Generally, an agency first conducts a threshold analysis to determine whether it can certify the proposed rule. The threshold analysis provides the factual basis for such a determination. If the results of the threshold analysis indicate that a rule may have a significant impact on a substantial number of small entities, or if the agency is uncertain, it is required to prepare an Initial Regulatory Flexibility Analysis (IRFA) and publish the IRFA for public comment with the proposed rule. The analytic components of an IRFA are:

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

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

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

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

5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule;

6. A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities, such as,

- *the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;*
- *the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;*
- *the use of performance rather than design standards; and,*
- *an exemption from coverage of the rule, or any part thereof, for such small entities.*

This section presents data and analysis in support of these requirements. First, we provide an overview of the proposed rule, and then we conduct the threshold analysis in Section 6.2 of the RIA. Because the significance of impacts of the proposed rule on small entities is uncertain, we also prepare an IRFA in Section 6.3 of the RIA.

Overview of the Proposed Rule

This proposed rule makes merchandise subject to an *ad valorem* tariff pursuant to a trade or national

security action under Section 232, 201, or 301 ineligible for the administrative exemption in 19 U.S.C. 1321(a)(2)(C).

Such shipments would instead need to be entered through an alternate entry type, such as entry type 01 (formal) or entry type 11 (informal). Importers of such goods would then have to pay both the additional duties owed under a specified trade or national security action and regular customs duties, if applicable, when the value is below $800. To enable CBP to determine which entries are ineligible, CBP would require a 10-digit Harmonized Tariff Schedule of the United States (HTSUS) classification for all shipments of merchandise entered using the basic or enhanced entry processes proposed in the ELVS NPRM and claiming the administrative exemption. In the ELVS NPRM, CBP proposed to require that HTSUS codes be collected for qualifying low-value shipments entered through an enhanced entry process. Modifying these changes proposed in ELVS, this Trade and National Security Actions and Low-Value Shipments NPRM would expand that requirement to low-value shipments entered through the basic entry process proposed in ELVS, by requiring the provision of a 10-digit HTSUS code(s) on the bill of lading or other entry document.

This proposed rule would strengthen the United States' trade and national security actions, especially for Section 301 tariffs. For example, the goal of the current Section 301 tariffs is to discourage China's acts, policies, and practices related to technology transfer, intellectual property, and innovation that are unreasonable or discriminatory and burden or restrict U.S. commerce. Additionally, trade and national security actions can be used to protect domestic industries from substantial threat of serious injury, or the threat thereof by import surges or adjust imports that threaten to impair national security. An industry that is particularly vulnerable to circumvention by qualifying low-value shipments is the U.S. textile and apparel manufacturing industry. A large volume of textile and apparel imports claim the administrative exemption thereby avoiding tariffs. Specifically, approximately 50 percent of the value of current qualifying low-value shipments is attributed to textiles and apparel that would otherwise be subject to additional duties under Section 301.[47] Broadly speaking, an estimated 15.9 percent of imports covered by Section 232, 201, and 301 tariffs are exempt from the additional tariffs under the administrative exemption.[48] By including imports that would have been eligible for the administrative exemption without this rule, CBP would increase the effectiveness of these specified trade and national security actions. These actions would help protect national security and discourage unreasonable or discriminatory practices.

This rule would also increase CBP's inspection efficiency by shifting a large share of low-value shipments into alternative entry types. Qualifying low-value entries are more challenging for CBP to efficiently inspect than other entry types because they arrive with more limited data. As a result, CBP officers must do more work to ensure a low-value shipment is admissible and otherwise complies with applicable U.S. trade laws and regulations. Shipments entered using entry type 01 or entry type 11, in contrast, arrive with more detailed information about the contents of the goods included in the shipment.

Furthermore, shifting low-value shipments to an alternative entry type is likely to result in consolidation of multiple items into a single shipment. Specifically, the $800 limit for qualifying low-value shipments incentivizes importers to de-consolidate goods into numerous low-value shipments to avoid paying tariffs. Absent the ability to avoid tariffs, importers are likely to be incentivized to reduce per-unit shipping costs by consolidating items in bulk shipments. This consolidation results in fewer, higher value entries, where multiple items can be reviewed by CBP officers at the same time.

Finally, the proposed rule is likely to improve CBP's ability to accurately identify the contents of a shipment claiming the administrative exemption even if it does not contain goods subject to a trade or national security action under Section 232, 201, or 301. Many of these goods currently use manifest clearance to enter the United States. The ''release from manifest'' entry process (or the proposed new basic entry) is (or would be) less costly for importers, because less information is submitted to CBP, but the release of shipments by CBP is slower, averaging 3 days.[49] In contrast, shipments using entry types 01 or 11, or the current entry type 86 (or the proposed new enhanced entry), are (or would be) typically released by CBP within 1 day. This proposed rule would require a 10-digit HTSUS classification for all basic entry shipments. As a result, importers will likely opt for enhanced entry, with its faster clearance times, given that the difference in administrative costs between basic and enhanced will become negligible. Having the HTSUS classification, along with several additional data elements required for enhanced entry, will improve CBP's ability to identify violative shipments. Furthermore, because enhanced entry is an automated process with required data elements being submitted in advance of the shipment's arrival in the United States, additional efficiency gains for CBP officers and importers are likely.

Threshold Analysis

A threshold analysis conducted pursuant to RFA/SBREFA involves determining whether the proposed regulatory changes will significantly impact a substantial number of small entities subject to the regulation. Responding to this question requires understanding both: (1) the number of affected entities that are small; and (2) the economic impact on these small entities in the context of the proposed regulatory action.

Should the proposed rule go into effect, entities could be affected in two ways:

1. Imports subject to a trade or national security action under Section 232, 201, or 301 would no longer qualify for the administrative exemption in 19 U.S.C. 1321(a)(2)(C), which allows a shipment to be imported duty-free when the aggregate fair retail value in the country of shipment for articles imported into the United States on the same day and exempted from the payment of duty does not exceed the administrative exemption limit of $800 per person per day. Consignees (*i.e.,* consumers) of these imports will pay higher prices for the goods resulting from tariffs and, possibly, additional processing fees.

2. Paperwork for other imported goods using the administrative exemption will need to include HTSUS codes to facilitate CBP's ability to confirm that the goods are not covered by Section 232, 201, or 301 tariffs. Consignees of these imports will pay higher prices for the goods resulting from additional processing fees assessed by CBP and by licensed customs brokers.

[47] Proportion of qualifying low-value shipments containing Section 301 textile and apparel items is calculated using data on type 86 entries provided by CBP via email on August 14, 2024. We assume that qualifying low-value shipments cleared off the manifest are similar in nature to goods using type 86 entry.

[48] See Chapter 5 of the RIA available in the docket of this rulemaking for sources and estimation method.

[49] See the ELVS Regulatory Analysis supporting the NPRM.

Judicial review of agency compliance with the RFA requirements limits the scope of regulatory flexibility analyses to directly regulated entities (SBA 2017). In the case of the proposed rule, the entities that would have claimed the administrative exemption absent the proposed rule are considered directly regulated and therefore the subject of the threshold analysis. Here, consignees (*i.e.,* consumers) are the entities or individuals potentially eligible for the administrative exemption. As described in detail in Section 3.4 of the RIA, we assume that all duties and fees are incurred directly by consignees.

Consistent with the scenarios evaluated in the above sections, this section conducts the threshold analysis under two scenarios meant to act as upper and lower bounds of the effects of this proposed rule. These scenarios highlight the uncertainty regarding how importers will respond to the rule requirements:

- *Low Impact Scenario:* All importers respond to avoid fees. Importers of Section 232, 201, and 301 goods consolidate while importers of goods not subject to specified trade or national security actions either consolidate or move to postal. In this scenario, price increases are limited to required tariffs, because all other fees are assumed to be fully mitigated.
- *High Impact Scenario:* In this scenario, less consolidation of shipments occurs. As a result, in addition to tariffs, prices are also affected by higher fees. See Sections 3.3.1 and 3.3.2 of the RIA for detailed descriptions of the price shocks under each scenario.

Substantial Test

This section explores whether a substantial number of affected entities are small. The RFA does not provide a definition of a ''substantial number.'' In its guide to government describing how to comply with the RFA, the SBA states:

''*Substantial number*'' *depends on the number of regulated entities and the size of the regulated industry. The interpretation of the term* ''*substantial number*'' *is not likely to be five small firms in an industry with more than 1,000 small firms. On the other hand, it is important to recognize that five small firms in an industry with only 20 firms would be a substantial number. Depending on the rule, the substantiality of the number of small businesses affected should be determined on an industry-specific basis and/or on the number of small businesses overall. (SBA 2017, p. 21.)*

This analysis evaluates the extent to which a substantial number of consignees that would become ineligible for the administrative exemption due to the proposed rule are small entities. Affected consignees could be anyone in the United States—including businesses, not-for-profit organizations, and government jurisdictions as well as individuals—that purchases a good valued at $800 or less from a retailer that manufactures products outside of the United States. Individuals are not ''entities'' as defined by the RFA, and thus are excluded from this analysis.

All small entities in the United States have the potential to be affected by the proposed rule. As described in Chapter 3 of the standalone RIA document, the proposed rule affects products produced by 19 industries defined at the 3-digit North American Industry Classification System (NAICS) sector, with more than half of the affected goods coming from the apparel industry. Ideally, this analysis would rely on all historical low-value shipment transactions to characterize the entities most likely to be affected by the proposed rule. In the absence of that information, we characterize which industries are most likely to be affected, and which portion of consignees may be small entities, using data on consignees who imported goods using type 86 entries over the course of an example day in fiscal year 2023. This analysis relied on the following steps:

1. Identify a sample of businesses that are consignees. As noted above, we rely on a sample of shipments using type 86 entry for one day in fiscal year 2023 as a representative sample of consignees importing qualifying low-value shipments absent this rule. On this date, CBP identified nearly 1.2 million consignees associated with approximately 1.6 million type 86 entries. Within this list, CBP detected 786 likely businesses based on the names provided in the ''header party'' field and randomly selected 394 of these businesses for analysis.[50] [51]

2. Obtain the business profiles of the consignees. We uploaded the names and location information for the 394 businesses to D&B Hoovers' website and relied on D&B Hoovers' proprietary algorithm to match entities with the information stored in its database.[52] For the 394 businesses in our sample, D&B Hoovers' search functionality was able to match profiles for 182 entities (46 percent). The 212 unmatched consignees either do not have business profiles in D&B Hoovers or the owner's name and location information provided by CBP do not match the business records on the site. For the 182 matched entities, we collect primary NAICS code, number of employees,[53] and annual revenue information as presented in D&B.[54]

3. Determine which businesses in the sample are small businesses. We compare number of employees and annual revenues with the SBA's definitions of small business associated with each six-digit NAICS code (SBA 2023).[55]

The 182 businesses in the sample are associated with 117 NAICS codes (6-digit) spanning many sectors. Table 5 provides a sample of NAICS codes represented by the consignee businesses to demonstrate the breadth of industries associated with type 86 entries on a given day. As shown in Table 6, the consignees organize into nearly every 2-digit sector NAICS code. Using the 6-digit NAICS codes for classification purposes, 92 percent of businesses in the sample qualify as small businesses.

Data from CBP does not identify the type of good associated with the consignees, therefore we are unable to differentiate between entities that would be affected by Section 301 tariffs (in both the low scenario and high scenario) and all other entities that would be affected by fees in the high scenario only.

Taken together, this analysis finds that a substantial number of small entities may be affected by the proposed rule.

[50] To detect businesses, CBP looked for entities that used the following key terms in their names: Inc., Co., LLC. Individuals with these letter combinations in their names were later manually screened out of the sample. CBP did not attempt to identify not-for-profit organizations or governmental jurisdictions in its consignee data. (Personal communication between IEc and CBP on July 6, 2023.)

[51] Data pulled from ACE Reports on June 13, 2023 representing all consignees of type 86 entries on January 1, 2023. CBP provided the cleaned data to IEc via email on June 23, 2023.

[52] This process relies on D&B Hoovers' automated search functions to identify the business profiles associated with a list of businesses, not manual business-by-business searching. This search functionality is described in more detail in D&B Hoovers (2019, p. 25). This resource is available at *https://app.dnbhoovers.com/product/wp-content/uploads/2020/10/DB-Hoovers-User-Guide-920.pdf.*

[53] D&B Hoovers contains data fields for both ''employees at single site'' and ''employees at all sites.'' When both numbers are provided, we default to using the ''employees at all sites'' entry in order to capture the size of the larger parent company. When only the ''employees at single site'' information is available, we use that entry instead.

[54] The matched data was downloaded from D&B Hoovers on July 27, 2023, accessed via: *app.dnbhoovers.com/login.* We assume all data to be in 2023 dollars, consistent with the download date.

[55] In some cases, SBA provides a size standard for the NAICS code as well as an ''exception'' for a subset of businesses with specific activity types. This analysis does not consider the ''exceptions'' when classifying businesses as small.

TABLE 5—EXAMPLE NAICS CODES AMONG SAMPLED CONSIGNEES

NAICS code	Industry
111998	All Other Miscellaneous Crop Farming.
221118	Other Electric Power Generation.
236115	New Single-family Housing Construction.
238340	Tile and Terrazzo Contractors.
238910	Site Preparation Contractors.
238990	All Other Specialty Trade Contractors.
311615	Poultry Processing.
325199	All Other Basic Organic Chemical Manufacturing.
325412	Pharmaceutical Preparation Manufacturing.
325510	Paint and Coating Manufacturing.
325910	Printing Ink Manufacturing.
332312	Fabricated Structural Metal Manufacturing.
332322	Sheet Metal Work Manufacturing.
332710	Machine Shops.
333310	Commercial and Service Industry Machinery Manufacturing.
335313	Switchgear and Switchboard Apparatus Manufacturing.
339940	Office Supplies (except Paper) Manufacturing.
423110	Automobile and Other Motor Vehicle Merchant Wholesalers.
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers.
423110	Automobile and Other Motor Vehicle Merchant Wholesalers.
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers.
423110	Automobile and Other Motor Vehicle Merchant Wholesalers.
445110	Supermarkets and Other Grocery Retailers.
449110	Furniture Retailers.
449210	Electronics and Appliance Retailers.
531311	Residential Property Managers.
532111	Passenger Car Rental.
541618	Other Management Consulting Services.
561730	Landscaping Services.
611110	Elementary and Secondary Schools.
811111	General Automotive Repair.
811192	Car Washes.
812112	Beauty Salons.
812910	Pet Care (except Veterinary) Services.

Note: The NAICS codes presented in this table represent a sample of industries associated with entry type 86 consignees on a typical recent date, not a comprehensive list of all affected industries. See the main text for details.

TABLE 6—NUMBER OF SMALL BUSINESSES IN SAMPLE OF CONSIGNEES

Two-digit NAICS code [a]	Sector	Total businesses in sample	Small businesses in sample	Percent small
11	Agriculture, Forestry, Fishing and Hunting	1	1	100
22	Utilities	2	2	100
23	Construction	11	11	100
31	Manufacturing	2	1	50
32	Manufacturing	7	6	86
33	Manufacturing	17	16	94
42	Wholesale Trade	14	12	86
44	Retail Trade	23	22	96
45	Retail Trade	8	8	100
48	Transportation and Warehousing	5	5	100
49	Transportation and Warehousing	1	1	100
51	Information	5	5	100
52	Finance and Insurance	1	1	100
53	Real Estate and Rental and Leasing	5	5	100
54	Professional, Scientific, and Technical Services	21	20	95
55	Management of Companies and Enterprises	2	1	50
56	Administrative and Support and Waste Management and Remediation Services.	9	7	78
61	Educational Services	2	1	50
62	Health Care and Social Assistance	5	4	80
72	Accommodation and Food Services	6	5	83
81	Other Services (except Public Administration)	18	17	94
99	Unclassified [b]	17	17	100
Total		182	168	92

Sources: IEc analysis of 182 businesses named as consignees of type 86 entries for one day in 2023 (provided by CBP), business profiles from D&B Hoovers, and SBA small business size standards (SBA 2023). See text for details.

Notes:

1. While 2-digit NAICS codes are used for presentation purposes, the 6-digit NAICS codes were used to determine which businesses are small.
2. All businesses identified with NAICS code 999990 in D&B Hoovers are presumed small.

Significance Test

This section tests whether the effects of the rule would be significant for the small entities identified above. The RFA does not define a ''significant effect'' in quantitative terms. In its guidance to agencies on how to comply with the RFA, SBA states,

[i]n the absence of statutory specificity, what is 'significant' will vary depending on the economics of the industry or sector to be regulated. The agency is in the best position to gauge the small entity impacts of its regulation. (SBA 2017, p. 18.)

DHS component agencies typically assume that an annual per entity cost exceeding 1 percent of the annual gross revenues for that entity is significant (Houser 2012). Therefore, this analysis considers the 1 percent threshold when analyzing these potential impacts.

To accurately assess whether small entity consignees are likely to be significantly affected by the rule requires data on the total volume of affected shipments each entity is likely to purchase. Data describing total historical qualifying low-value shipment volume for the 168 small businesses in the sample of consignees provided by CBP is not readily available. Instead, we compare the value of the shipments with the percent increase in cost considering Section 301 tariffs (for the low and high scenarios) as well as the increased fees associated with entry (for the high scenario only). While the value of a shipment is not a measure of revenue, it provides a proxy for the capacity of entities to absorb the potential increases in shipment costs.

Low Impact Scenario

In the low impact scenario, qualifying low-value shipments formerly claiming the administrative exemption incur tariffs averaging 21.25 percent on an *ad valorem* basis (see Chapter 3 in the standalone RIA available in the docket of this rulemaking). As described in Chapter 3, we assume consignees incur 100 percent of the tariff. Table 7 presents the distribution of affected shipments by shipment value, using entry type 86 shipments imported in fiscal year 2023 as a representative sample (*i.e.,* the exact distribution may differ for shipments cleared off the manifest that would have entered with an administrative exemption in the baseline).

TABLE 7—DISTRIBUTION OF QUALIFYING LOW-VALUE SHIPMENTS BY SHIPMENT VALUE

Shipment value bin	Mid-point of shipment value	% of total entry type 86 shipments
$0–$5	$2.50	18.5
$6–$25	15.50	43.0
$26–$50	38.00	20.0
$51–$75	63.00	8.4
$76–$100	88.00	4.7
$101–$200	150.50	4.7
Over $200	500.50	0.8

Source: IEc analysis of data provided by email from CBP on September 9, 2024.

Using the mid-point of shipment value for each bin, the weighted average value per shipment is approximately $32. Applying the tariff rate likely to be incurred by consignees, we find that the increased cost per shipment is approximately $6.80 (21.25 percent of $32). We do not have readily available data on the number of affected shipments imported annually per entity. Therefore, it is uncertain whether tariff rates of this magnitude impose a significant impact on small entities importing these affected shipments under the low scenario. However, a 21.25 percent increase in the cost of importing affected goods represents a significant impact relative to the value of the shipment.

High Impact Scenario

In the high impact scenario, consignees of affected low-value shipments experience price increases resulting from the tariffs described above in the low impact scenario. Additionally, some consignees incur additional price increases resulting from fees required to file and process shipments (for a detailed description see Chapter 3 in the standalone RIA available in the docket of this rulemaking). Table 8 summarizes the additional per shipment fees that might be incurred, depending on the carrier providing shipping services. None or some combination of these fees apply, depending on whether the shipment includes a good subject to additional Section 232, 201, or 301 duties, and whether a broker is already involved in the shipping process in the baseline.

TABLE 8—PER SHIPMENT FEES

Type	Fee ($/shipment)
Broker fee: [1]	
Commercial non-express carrier [2]	$1.00
Express commercial carrier [3]	30.00
Postal carrier [3]	8.55
Merchandise Processing Fee: [4]	
All	2.53

Sources and assumptions:

[1] A licensed broker is not currently required for the ''release from manifest'' entry process, nor would the ELVS NPRM require one for the basic entry process if the ELVS NPRM is finalized as proposed. We assume for the purposes of this analysis that a broker fee is charged for any entry requiring an HTSUS code and is similar regardless of whether the filer uses enhanced entry, entry type 86, 01, or 11. (Source: Personal communication with representatives of a major broker association on 9/26/2024.)

[2] Email from CBP dated 10/11/2024.

[3] Fajgelbaum and Khandelwal (2024).

[4] Minimum merchandise processing fee for informal entries as of October 1, 2023. (As viewed on 10/11/2024 on *https://www.federalregister.gov/documents/2023/07/28/2023-16197/cobra-fees-to-be-adjusted-for-inflation-in-fiscal-year-2024-cbp-dec-23-08.*) Informal entries apply to shipments that do not exceed $2,500 and is the entry option most likely to be used for shipments currently exercising the administrative exemption (*i.e.,* shipments that do not exceed $800).

Relying on the detailed information characterizing shipment/fee combinations provided in Chapter 3 in the standalone RIA (available in the docket of this rulemaking) we find:

- Approximately 73 percent of qualifying low-value shipments do not experience increases in fees; only additional tariffs will apply.
- Among the commercial non-express carriers, only the consignees with shipments moving from manifest clearance to enhanced are expected to incur increased fees. This bin represents approximately 4 percent of total qualifying low-value shipment volume. Increased fees range from 1 percent to 40 percent of the value of the shipment.
- Among express commercial carriers, nearly all shipments will incur additional fees, ranging from 1 percent to 1,301 percent of the value of the shipment. These fees are in addition to the tariffs described above. The affected shipments represent 18 percent of total qualifying low-value shipments.
- For postal, only shipments containing Section 232, 201, and 301 goods experience additional fees. These shipments represent approximately 6 percent of total low-value shipment volume. Increased fees range from 2 percent to 443 percent of the shipment value, and are in addition to tariffs.

As described in the low impact scenario, data describing the number, value, and entry mode of qualifying low-value shipments by consignee is not readily available. Therefore, we are uncertain whether tariffs and fees of this magnitude impose a significant impact on the annual revenues of small entities importing these affected shipments. However, the value of fees and tariffs relative to the value of individual shipments suggests the potential for a significant increase in the price of affected goods. Given that options exist for reducing fees, such as consolidation, and are likely to be available for many shipments, we believe the low impact scenario is more likely.

D. Initial Regulatory Flexibility Analysis (IRFA)

Due to uncertainty regarding whether impacts to various small entities are significant, CBP does not certify that this rule has a significant economic impact on a substantial number of small entities and we instead provide information in this section for an IRFA.

1. A description of the reasons why action by the agency is being considered.

U.S. trade law authorizes the President or USTR to assess additional tariffs under certain acts of Congress, including the Trade Expansion Act of 1962 and the Trade Act of 1974. Section 232 of the Trade Expansion Act of 1962 authorizes the President to adjust imports of an article and its derivatives if there is a determination that the article is being imported in such quantities or under such circumstances as to threaten to impair the national security. Section 201 of the Trade Act of 1974 authorizes the President to impose temporary trade measures if there is substantial cause of serious injury or threat thereof to U.S. industries because of increased imports. Lastly, Section 301 of the Trade Act of 1974 allows USTR to impose import restrictions to address, among others, unreasonable or discriminatory acts, policies, or practices that burden or restrict U.S. commerce. This proposed rulemaking will refer to Section 232, 201, or 301 as ''specified trade or national security actions.''

Trade or national security actions are designed to protect domestic industries and the American public from serious injury, or the threat thereof, caused by import surges and unfair trade practices or to adjust imports that threaten to impair national security, or to encourage foreign governments to eliminate policies that are unreasonable or discriminatory and burden or restrict U.S. commerce. However, some merchandise subject to specified trade or national security actions may also be eligible for the administrative exemption pursuant to Section 321 of the Trade Act of 1930, as amended (19 U.S.C. 1321(a)(2)). Section 321 provides administrative exemptions from duty and taxes that are imposed by reason of importation for three categories of imported articles:

- Certain bona-fide gifts valued at $100 or less ($200, if the gift was from certain island possessions) sent from persons in foreign countries to persons in the United States;
- Certain personal or household articles valued at $200 or less accompanying persons arriving in the United States; and
- All other imported articles when the aggregate fair retail value of the articles in the country of shipment is $800 or less.

This proposed rulemaking concerns shipments in the third category, which are covered by the administrative exemption in 19 U.S.C. 1321(a)(2)(C). To avoid confusion with the other two administrative exemptions, we will refer to this exemption alone as the ''administrative exemption.'' Specifically, the administrative exemption allows a shipment to be imported free of duties and taxes imposed upon or by reason of importation when the aggregate fair retail value in the country of shipment of articles imported by the same person on the same day and exempted from the payment of duty is less than or equal to $800. The administrative exemption limit was originally set at $1 in the Customs Administrative Act of 1938 to limit the ''expense and inconvenience'' of collecting duty when it was a disproportionate amount of work by the U.S. government compared to the amount of revenue that would be collected. Since its inception, Congress has increased this daily aggregate value cap to $5 in 1978, $200 in 1993, and $800 in 2016. In recent years, the volume of imports subject to specified trade or national security actions has increased, but the tariffs imposed as a result of these actions do not apply to imports that enter as qualifying low-value shipments. Thus, the administrative exemption dampens the impact of specified trade or national security actions by allowing imports that claim the exemption to legally avoid all duties and taxes that would otherwise be collected, including the additional duties collected under specified trade and national security actions. In fiscal year 2023, hundreds of thousands of shipments would have been assessed additional tariffs under Section 232, 201, or 301 had they entered through formal or other type of informal entry.

Additionally, low-value shipments create operational inefficiencies for

CBP's ability to conduct an inspection of these goods. The volume of qualifying low-value shipments has risen sharply from approximately 139 million in fiscal year 2015 (prior to the increase in the exemption value) to 1 billion shipments per year in fiscal year 2023.[56] While entry type 86 has sped up processing for many of the qualifying low-value shipments, the remaining shipments are processed manually and with more limited data than other types of entries. CBP anticipates that this rulemaking would reduce the volume of qualifying low-value shipments and thereby increase the efficiency with which CBP identifies imports presenting security risks, including curbing the smuggling of illegal opioids such as heroin and fentanyl, by shifting some shipments to other entry types that require more data and the use of an authorized broker.

2. A succinct statement of the objectives of, and legal basis for, the proposed rule.

The proposed rulemaking aims to uphold the objectives of U.S. trade and national security actions, protect the revenue, and prevent unlawful importations. Trade or national security actions, such as additional tariffs under Section 232, Section 201, and Section 301, are meant to prevent specific harms such as the threat posed by certain imports to national security or domestic industries or to respond to discriminatory or unreasonable practices that restrict or burden U.S. commerce. The rule would prevent low-value shipments from circumventing these trade or national security actions by claiming the administrative exemption. Moreover, considering the rate of duties and the aggregate trade volume of affected imports, the amount of additional revenue to be collected under the proposed rule would substantially outweigh any added expense or inconvenience to the U.S. Government. Finally, CBP expects that the affected goods would be consolidated into larger shipments and entered under an appropriate formal or informal entry process, resulting in decreased overall volume of shipments. This consolidation would help CBP officers inspect entries for inadmissible merchandise more efficiently.

The authority to except merchandise subject to specified trade or national security actions from the administrative exemption comes from 19 U.S.C. 1321(b). This statutory provision authorizes regulations that except certain merchandise from eligibility for the administrative exemptions in 19 U.S.C. 1321(a) when such exceptions are consistent with the purpose of 19 U.S.C. 1321(a), or necessary to protect the revenue or to prevent unlawful importations. The authority to require HTSUS classification as part of the proposed basic entry process (in addition to the proposed enhanced entry process) as described in the ELVS NPRM comes from 19 U.S.C. 498(a)(1)(A), which authorizes the prescription of special rules for the declaration and entry of low-value shipments.

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

As described in Section 6.2.1 of the standalone RIA, the proposed rule does not directly regulate any one industry. Instead, it 1) imposes additional requirements on shipments that seek to use the administrative exemption, and 2) makes goods subject to *ad valorem* tariffs under Section 232, 201, and 301 ineligible for the administrative exemption. Therefore, any individual or entity that would have claimed the administrative exception in the baseline is affected by the proposed rule. Those individuals and entities importing goods that previously met the requirements for the administrative exemption are likely to be affected by higher prices for these goods.

Any small entity in the United States has the potential to be affected by the rule as a consignee. Analysis of a sample of consignees of shipments using type 86 entry for one day in 2023 demonstrates that 92 percent of businesses in the sample qualify as small.

4. A description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The proposed rule would add a reporting requirement to the basic entry process beyond the proposed requirements described in the ELVS NPRM. Under this rule, the 10-digit HTSUS classification would need to be reported with the entry filing for each product in a basic entry. The 10-digit HTSUS classification reporting requirement is already proposed for enhanced entry in the ELVS NPRM. Any small entity that would import a low-value shipment subject to specified trade or national security actions through basic entry in the absence of this rule would be affected by this new requirement. This would include both small businesses and individual consumers. Reporting the HTSUS codes requires the ability to determine the merchandise's HTSUS codes. We expect most importers to hire a licensed customs broker to determine the HTSUS codes and file the entry.

5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

This proposed rule would not conflict with any relevant Federal rules. This NPRM does, however, propose amendments to another NPRM's proposed amendments. The ELVS NPRM proposes the creation of a new entry process for entering low-value shipments, referred to as the ''enhanced entry process,'' which would allow CBP to target high-risk shipments more effectively. The ELVS NPRM also proposes revisions to the current process for entering low-value shipments cleared off the manifest, referred to as the ''basic entry process,'' to require additional data elements that would assist CBP in verifying eligibility for duty- and tax-free entry. For more information about the ELVS NPRM and its effects, please see *regulations.gov* for the rule and the accompanying regulatory analysis.

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

In addition to the preferred regulatory alternative (the proposed rule), CBP also considered two other alternatives.

- First, CBP considered a more stringent alternative where all shipments except for bona fide gifts under 19 U.S.C. 1321(a)(2)(A) would be prohibited from claiming the administrative exemption. Although this alternative is not modeled in this analysis, CBP anticipates the incremental welfare loss and gain in tariff revenue under this alternative would be greater than those under the proposed rule because more shipments would be affected. Therefore, this alternative has the potential to increase impacts on small entities.
- Second, CBP considered an alternative identical to the proposed rule but with an additional requirement that HTSUS codes be required for postal shipments entered by USPS. This alternative is not feasible because the collection of HTSUS codes in the postal environment is currently restricted by U.S. obligations under the Universal Postal Union. Therefore, this alternative would not meet the stated objectives of the proposed rule.

[56] Data pulled from CBP's Automated Targeting System (ATS) database.

E. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget (OMB). The collection of information contained in this proposed rule, will be submitted to OMB for review under section 3507(d) of the Paperwork Reduction Act (PRA). The public can direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Customs and Border Protection. Such comments can be submitted in the regulatory docket for this proposed rule.

This rule, if finalized, would make low-value shipments subject to specified trade or national security actions ineligible for the administrative exemption, resulting in a change to OMB-approved collection 1651–0024 beyond the changes proposed in the Entry of Low-Value Shipments NPRM. Under the changes to the information collection in that NPRM, basic entries do not have a time burden as they have no data requirement beyond what is submitted on the bill of lading, whereas CBP reports separate burden estimates for Form 3461s filed on paper, Form 3461s and Form 3461ALTs filed electronically, and enhanced entries filed electronically.

The proposed rule would require all entries using the basic entry process (as described in the ELVS NPRM) to provide a 10-digit HTSUS code to facilitate CBP's ability to confirm eligibility for the administrative exemption. Shipments found ineligible would need to refile under formal or other type of informal entry to enter the merchandise (excluding enhanced or basic entry), leading to a decrease in both basic and enhanced entries. Because the HTSUS code will be required for all shipments entered using the basic or enhanced entry process (subject to waiver in certain circumstances, as detailed in the Entry of Low-Value Shipments NPRM), there is less of a difference in the filing requirements between basic and enhanced entries, so we expect some basic entries to shift to enhanced entries. As a result, we will see a change in the number of responses for Form 3461, 3461ALT; Excluding Enhanced, and enhanced entries. CBP does not expect a change in the number of respondents as a result of this rule.

As low-value shipments subject to specified trade or national security actions are made ineligible for the administrative exemption, importers will have to file entry under formal or other type of informal entry (excluding enhanced or basic entry) and fill out Form 3461, 3461ALT (excluding enhanced). As low-value shipments shift away from basic or enhanced, CBP and brokers expect them to reconsolidate into larger shipments. CBP does not know the level of consolidation that will occur, and it is not estimated in the main analysis of this rulemaking, but subject matter experts in the trade community that CBP interviewed as part of the economic analysis report that they expect enough consolidation to occur that this rule will not result in additional time burden for the public and that it may even result in time savings. In keeping with that information, CBP is adjusting its estimates of the filings to reflect a level of consolidation at which the time burden to the public breaks even as a result of this rule. CBP will revisit these estimates when it renews this information collection. Upon finalization of this proposed rule, OMB-approved collection 1651–0024 will be revised to reflect the increased burden hours as follows:

Paper Only Entry/Immediate Delivery Form 3461

Estimated Number of Respondents: 1,669.

Estimated Number of Total Annual Responses: 33,923.

Estimated Time per Response: 0.25 hours (15 minutes).

Estimated Total Annual Burden Hours: 8,481.

ACE Cargo Release Electronic Submission

Form 3461 and 3461ALT Excluding Enhanced Entry

Estimated Number of Respondents: 6,580.

Estimated Number of Total Annual Responses: 23,027,005.

Estimated Time per Response: 0.17 hours (10 minutes).

Estimated Total Annual Burden Hours: 3,837,834.

Enhanced Entry

Estimated Number of Respondents: 535.

Estimated Number of Total Annual Responses: 242,230,193.

Estimated Time per Response: 0 hours (0.0007 minutes).

Estimated Total Annual Burden Hours: 2,826.

F. National Environmental Policy Act

DHS and its components analyze actions to determine whether the National Environmental Policy Act of 1969 (''NEPA''), 42 U.S.C. 4321 *et seq.,* applies to these actions and, if so, what level of NEPA review is required. 42 U.S.C. 4336. DHS's Directive 023–01, Revision 01 and Instruction Manual 023–01–001–01, Revision 01 (''Instruction Manual 023–01–001–01'') establish the procedures that DHS uses to comply with NEPA and the Council on Environmental Quality (''CEQ'') regulations for implementing NEPA, 40 CFR parts 1500 through 1508.[57]

Federal agencies may establish categorical exclusions for categories of actions they determine normally do not significantly affect the quality of the human environment and, therefore, do not require the preparation of an Environmental Assessment or Environmental Impact Statement. 42 U.S.C. 4336e(1); *see also* 40 CFR 1501.4, 1507.3(c)(8), 1508.1(e). DHS has established categorical exclusions, which are listed in Appendix A of its Instruction Manual 023–01–001–01. Under DHS's NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.

DHS has analyzed this action under Directive 023–01 and Instruction Manual 023–01–001–01. DHS has made a determination that this rulemaking action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. First, this proposed rule clearly fits within the Categorical Exclusions A3(a) and A3(d) of DHS's Instruction Manual 023–01–001–01, Appendix A, for the promulgation of rules of a ''strictly administrative or procedural nature'' and rules that ''interpret or amend an existing regulation without changing its environmental effect,'' respectively. The proposed rule would create a new

[57] CBP is aware of the November 12, 2024 decision in *Marin Audubon Society* v. *Federal Aviation Administration,* No. 23–1067 (D.C. Cir. Nov. 12, 2024). To the extent that a court may conclude that CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency action, CBP has nonetheless elected to follow those CEQ regulations, in addition to DHS's Directive and Instruction Manual, to meet the agency's obligations under NEPA, 42 U.S.C. 4321 *et seq.*

process for entering low-value shipments, allowing CBP to target high-risk shipments more effectively. The proposed rule would also revise the current process for entering low-value shipments to require additional data elements that would assist CBP in verifying eligibility for duty- and tax-free entry of low-value shipments and bona-fide gift. Second, this NPRM is not part of a larger action. Third, this NPRM presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, a more detailed NEPA review is not necessary. DHS seeks any comments or information that may lead to the discovery of any significant environmental effects from this NPRM.

Signing Authority

In accordance with Treasury Order 100–20, the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority related to the customs revenue functions vested in the Secretary of the Treasury as set forth in 6 U.S.C. 212 and 215, subject to certain exceptions. This regulation is being issued in accordance with DHS Directive 07010.3, Revision 03.2, which delegates to the Commissioner of CBP the authority to prescribe and approve/sign regulations related to customs revenue functions. Pete Flores, Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign this document to the Director (or Acting Director, if applicable) of the Regulations and Disclosure Law Division of CBP, for purposes of publication in the **Federal Register**.

List of Subjects

19 CFR Part 10

Bonds, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 128

Administrative practice and procedure, Freight, Reporting and recordkeeping requirements.

19 CFR Part 143

Reporting and recordkeeping requirements.

Proposed Amendments to the CBP Regulations

For the reasons stated above in the preamble, CBP proposes to amend 19 CFR parts 10, 128, and 143 as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 4513.

* * * * *

■ 2. Amend § 10.153 by adding paragraph (j);

The addition reads as follows:

§ 10.153 Conditions for exemption.

* * * * *

(j) The exemption provided for in § 10.151 is not to be allowed with respect to imported merchandise covered in an action imposing additional duties pursuant to either Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), Section 201 of the Trade Act of 1974 (19 U.S.C. 2251 *et seq.*), or Section 301 of the Trade Act of 1974 (19 U.S.C. 2411 *et seq.*).

* * * * *

PART 128—EXPRESS CONSIGNMENTS

■ 3. The general authority citation for part 128 continues to read as follows:

Authority: 19 U.S.C. 58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

■ 4. Amend § 128.21 by revising paragraph (a)(4)(ii) to read as follows:

§ 128.21 Manifest requirements.

(a) * * *

(4) * * *

(ii) If the merchandise is eligible for, and is entered under, the informal entry procedures as provided in § 128.24, except for merchandise eligible to pass free of duty and tax as provided in § 128.24(f) and entered under § 143.23(k) of this chapter.

* * * * *

PART 143—SPECIAL ENTRY PROCEDURES

■ 5. The general authority citation for part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1321, 1414, 1481, 1484, 1498, 1624, 1641.

■ 6. Amend § 143.23 by adding paragraph (k)(9) to read as follows:

§ 143.23 Form of entry.

* * * * *

(k) * * *

(9) The 10-digit classification of the merchandise in Chapters 1–97 (and additionally in Chapter 99, if applicable) of the Harmonized Tariff Schedule of the United States (HTSUS), if entering merchandise meeting the requirements of 19 U.S.C. 1321(a)(2)(C) and § 10.151.

* * * * *

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

[FR Doc. 2025–01074 Filed 1–17–25; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 500

23 CFR Part 515

[FHWA Docket No. FHWA–2024–0048]

RIN 2125–AG00

Asset Management Plans; Management and Monitoring Systems

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The FHWA is extending the comment period for a notice of proposed rulemaking (NPRM) and request for comments, which was published on November 13, 2024. The original comment period is set to close on January 13, 2025. The extension is based on concerns expressed by stakeholders that the January 13, 2025, closing date does not provide sufficient time to review and provide comprehensive comments. The FHWA recognizes that others interested in commenting may have similar concerns and agrees that the comment period should be extended. Therefore, the closing date for comments is changed to February 12, 2025, which will provide stakeholders and others interested in commenting additional time to discuss, evaluate, and submit responses to the docket.

DATES: Comments must be received on or before February 12, 2025. Late comments will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue SE., Washington, DC 20590, or submit electronically at *https://www.regulations.gov.* All comments should include the docket number that

appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9:00 a.m. to 5:00 p.m., E.T., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Tashia J. Clemons, Office of Infrastructure, 202–493–0551, *tashia.clemons@dot.gov;* or Mariya Tikhonova, Office of the Chief Counsel, 202–366–1356, *mariya.tikhonova@dot.gov,* Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or access all comments received by the DOT online through: *https://www.regulations.gov.* Electronic submission and retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded from the **Federal Register**'s home page at: *https://www.federalregister.gov.*

Background

On November 13, 2024, at 89 FR 89506, FHWA published in the **Federal Register** an NPRM proposing changes to the Asset Management Plans and Management and Monitoring Systems regulations. The original comment period for the NPRM closes on January 13, 2025. Stakeholders have expressed concern that this closing date does not provide sufficient time to review and provide comprehensive comments on the proposal. The FHWA recognizes that others interested in commenting may have similar concerns and agrees that the comment period should be extended by 30 days for interested parties to submit comprehensive comments. The closing date is changed from January 13, 2025, to February 12, 2025.

Authority: Sec. 1106 and 1203 of Pub. L. 112–141, 126 Stat. 405; 23 U.S.C. 109, 119(e), 144, 150(c), and 315; 49 CFR 1.85(a).

Gloria M. Shepherd,

Acting Deputy Administrator, Federal Highway Administration.

[FR Doc. 2025–00323 Filed 1–17–25; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 94

[Docket No.: OJP (OVC) 1812]

RIN 1121–AA91

International Terrorism Victim Expense Reimbursement Program

AGENCY: Office for Victims of Crime, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office for Victims of Crime (''OVC'') of the U.S. Department of Justice's Office of Justice Programs (''OJP''), proposes this rule to amend the program regulations for the International Terrorism Victim Expense Reimbursement Program (''ITVERP''), to streamline program operation, more expressly reflect certain policy and procedures adopted by OVC since it began administering the program in 2006, and to adjust cost category caps.

DATES: Comments must be received by no later than 11:59 p.m., E.T., on March 24, 2025.

ADDRESSES:

Electronic comments: OVC encourages commenters to submit all comments electronically through the Federal eRulemaking Portal, which provides the ability to type comments directly into the comment field on the web page or attach a file. Please go to *https://www.regulations.gov* and follow the on-line instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number. Submitted comments are not instantaneously available for public view on *regulations.gov*. If you have received a Comment Tracking Number, you have submitted your comment successfully and there is no need to resubmit the same comment. Commenters should be aware that the system will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Paper comments: OVC prefers to receive comments via *www.regulations.gov* where possible. Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment in lieu of an electronic comment, it should be sent via regular or express mail to: ITVERP, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW, Washington, DC 20531.

To ensure proper handling of comments, please reference ''OJP Docket No. 1812'' on all electronic and written correspondence, including any attachments.

FOR FURTHER INFORMATION CONTACT: Victoria Jolicoeur, International Terrorism Victim Expense Reimbursement Program, Office for Victims of Crime, at 202–307–5134.

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *www.regulations.gov*. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish for it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information that you do not want posted online in the first paragraph of your comment, and identify with specificity what information you want the agency to redact.

If you wish to submit confidential business information as part of your comment, but do not wish it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify all confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the agency may choose not to post all or part of that comment.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information

identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the ''For Further Information Contact'' paragraph.

II. Background

The Victims of Crime Act of 1984 (VOCA), sec. 1404C (34 U.S.C. 20106), added in an amendment to VOCA by the Victims of Trafficking and Violence Protection Act (VTVPA) of 2000, sec. 2003(c), authorizes OVC to reimburse certain expenses to eligible victims of acts of international terrorism. Eligible victims include U.S. nationals, as well as foreign nationals working for the U.S. government at the time of the terrorist act. OVC published a notice of proposed rulemaking at 70 FR 49518–49525, on August 24, 2005, and published the current rule at 71 FR 52446, on September 6, 2006, and it went into effect on October 6, 2006. On April 11, 2011, at 76 FR 19909, OVC published an interim-final rule allowing the Director additional discretion to accept late-filed claims upon a showing of good cause. This was finalized at 88 FR 3656 on January 20, 2023. Aside from the 2011 amendment to the deadline provision, the overall rule, including category caps, has not been updated since the program's inception.

OVC proposes this rule, pursuant to its rulemaking authority at 34 U.S.C. 20110(a), to make minor updates to the regulations to reflect contemporary program policies and procedures adopted by OVC since it began administering the program in 2006, and to adjust cost category caps.

III. Section-by-Section Discussion of Proposed Changes

The following is a summary of the changes that OVC proposes:

Current provision	Proposed change
94.12(c) Definition of *Collateral sources*.	Makes patent longstanding OVC policy of presuming (unless the claimant demonstrates otherwise) that hostile fire or imminent danger pay for U.S. military personnel who claim expenses for incidents occurring in an officially designated combat zone or a qualified hazardous duty area, is a collateral source. Non-substantive changes to improve readability.
94.12(g) Definition of *Funeral and burial*.	Allows reimbursement of travel costs for up to five family members, instead of two. This reflects OVC's observation that it is common for more than two family members to travel to attend victim funerals. Increasing the cap to five would allow OVC to better assist victims with legitimate expenses while maintaining a cap on program expenses for funeral travel.
94.12(i) Definition of *Incompetent* ...	Minor change to replace the outdated and offensive term ''mental retardation'' with ''cognitive disability.''
94.12(r) Definition of *Property loss*	Adds the word ''typically'' when providing that medical devices are to be included under the medical expense category and not the property loss category. This would replace the current limit with a presumption to allow OVC to characterize medical device loss in the category that maximizes victim reimbursement.
94.12(u) Definition of *Victim*	Adds the words ''Is otherwise unable to submit a claim as a result of the act of terrorism'' (in a new subparagraph (iv) under (u)(2)) to allow for the surviving spouse, children, parents, and siblings to be considered victims for purposes of this program when an individual is rendered missing as a result of an act of international terrorism. The Federal Bureau of Investigation (FBI) has indicated to OVC that it has encountered victims who would have found such support from ITVERP to be beneficial.
94.21 Eligibility	Clarifies OVC's longstanding practice of allowing applicants to submit an initial application, followed by supplemental applications for expenses incurred after the initial application (e.g., ongoing medical care).
94.23 Amount of reimbursement ..	Clarifies that the reimbursement cap in effect at the time that the application (whether initial or supplemental) is received is the cap that applies to all awards under that application. Thus, an applicant may file a supplemental claim to take advantage of a higher cap limit in categories where that applicant previously hit the cap. This rule increases the administrative burden on OVC to determine additional supplemental claims, but OVC anticipates being able to manage this burden within current program resources due to the ITVERP's relatively small size. The change has the benefit of providing better coverage of actual victim expenses and avoiding discrepancies between caps applied to claimants under the same incident who filed at different times. The proposed provision also adds language to automatically adjust the caps for inflation every five years.
94.24 Determination of the award	Makes patent OVC's preferred practice of providing claimant notification via electronic means (e.g., email or its claims management system) by default.
94.25 Collateral sources	Makes non-substantive edits to paragraph (a) to clarify the provision, which addresses when offset of ITVERP reimbursement because of collateral sources is required.
94.31 Application procedures	Makes patent OVC's current practice (required by the ITVERP electronic claim system) of requiring all claimants to submit an itemized list of incident-related expenses for which they seek reimbursement, and to certify and attest to the veracity of that list and the supporting documentation. Adds that such certification must be made ''under penalty of perjury'' to make patent the penalty for a false certification. It also permits the Director to accept the list or alternative documentation, as appropriate, in lieu of receipts, which often are not retained (and are thus ''lost'') for a variety of reasons. Finally, the provision would make patent OVC's current practice of allowing claimants to submit *copies* of receipts, instead of the original document.
94.32 Application deadline	Makes patent OVC's current policy that the application deadline applies to the initial application. If the initial application is submitted in a timely manner, supplemental applications will be accepted any time after that at reasonable intervals (e.g., for ongoing costs).
94.33 Investigation and analysis of claims.	Modifies the prohibition on sharing victim identifying information with expert examiners/reviewers to require, instead, that OVC make reasonable efforts to minimize victim identifying information released to such reviewers. This change would allow OVC flexibility to take alternative measures to protect victim identities when redacting identifying information from voluminous medical records is not feasible.
94.41 Interim emergency payment	Changes the term ''interim emergency payment'' to ''conditional payment'' to better reflect the actual processing of claims where up-front payment may be justified. As a practical matter, conditional payments are rare, and ITVERP typically is not an ideal payment source for ''emergency'' needs due to the multiple reviews required prior to payment. Adds mental health care to the list of care that could be provided under a conditional payment.
94.42 Repayment and waiver of repayment.	Non-substantive simplifying and conforming (to the proposed 94.41) change to delete ''interim emergency or final award'' and replace it with ''award''.

Current provision	Proposed change
94.51 Request for reconsideration	Non-substantive conforming change to delete ''initial'' to reflect OVC's current practice of allowing ''initial'' and ''supplemental'' applications. The change would clarify that the Director may make determinations based on material submitted with either type of application or request for additional information.
Reimbursement caps	Increases overall cap from $105,000 to $175,000 per claimant.
Medical expenses	Increases cap from $50,000 to $80,000. OVC has received 7 claims over the category cap since 2006; the excess averaging $17,087.89. The proposed cap would accommodate these expenses.
Mental health care	Increases cap from $5,000 to $20,000, and eliminates the timeframe during which OVC may provide reimbursement. OVC has received 57 claims (about 10%) that have requested reimbursement above the mental health cap; the excess averaging $6112.78. Increasing the category cap would have covered these expenses. The higher cap also would align better with caps in most state victim compensation programs. Eliminating the time limit on mental health costs better reflects the reality that victims have mental health needs exceeding one year. The proposed provision also makes a conforming change reflecting the proposed 94.12(u)(iv), which recognizes family members of persons missing due to a terrorist incident as victims (where such a victim ''Is otherwise unable to submit a claim as a result of the act of terrorism'').
Property loss, repair, and replacement.	Increases cap from $10,000 to $15,000. OVC has received 17 claims exceeding this cap; the excess averaging $5561.18. The higher cap would have covered most of these expenses.
Funeral and burial costs	Increases cap from $25,000 to $35,000. OVC received four claims exceeding this cap; the excess averaging $5646.84. The higher cap would have covered most of these expenses.
Miscellaneous expenses	Increases cap from $15,000 to $25,000. OVC received six claims exceeding this cap; the excess averaging $8693.81. The higher cap would have covered most of these expenses.

All proposed amendments would apply to claims pending determination by OVC, and to all initial and supplemental claims filed after the effective date of the final rule.

IV. Regulatory Certifications

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'', 5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the Administrative Procedure Act (''APA''). As noted in the discussion, below, however, regarding the applicability of the APA, this proposed rule is exempt from the notice and comment requirements under section 553(b) or other provisions of law. Consequently, the RFA does not apply.

Nevertheless, consistent with the analysis typically required by the RFA (5 U.S.C. 605(b)), OVC has reviewed this proposed regulation and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This proposed regulation has no cost to State, local, or tribal governments, or to the private sector. The ITVERP is funded by fines, fees, penalty assessments, and bond forfeitures paid by Federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury. Therefore, an analysis of the impact of this proposed regulation on such entities is not required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

B. Executive Orders 12866, 13563, and 14094—Regulatory Review

This proposed regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), Principles of Regulation, Executive Order 13563 ''Improving Regulation and Regulatory Review'' section 1(b), General Principles of Regulation; and Executive Order 14094, ''Modernizing Regulatory Review.'' This proposed rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

The proposed rule would clarify and update the existing rule, to make patent in the program rule the existing OVC program policies and practices that have been developed since the program's inception, increase reimbursement category caps to reflect the actual data on victim needs gathered by OVC since 2006, and to make technical adjustments for clarity. It would not alter the underlying program structure. The cost to the federal government is largely administrative and is clearly outweighed by the government's interest, and statutory mandate, to see that U.S. victims of international terrorism are reimbursed for the expenses associated with their victimization. This proposed regulation has no cost to state, local, or tribal governments, or to the private sector. The ITVERP is funded by fines, fees, penalty assessments, and forfeitures paid by federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury, and set aside in the Antiterrorism Emergency Reserve Fund, from which OVC may obligate no more than $50 million in any given year.

The proposed changes in §§ 94.12(c), 94.12(u), 94.21, 94.24, 94.31, 94.32, 94.12(g), 94.12(i), 94.12(r), 94.25, 94.33, 94.41, 94.42 and 94.51, largely codify existing agency practices, update terminology, make technical clarifications, or make simplifying or conforming changes, and thus impose no costs but provide the substantial benefit of transparency in program administration. A few changes provide OVC with some additional flexibility (*e.g.,* to reimburse five instead of just two travelers for funeral/burial, or to characterize medical devices in either the medical or property loss category to maximize victim reimbursement), but do not create costs for non-Federal entities or individuals or materially increase Federal administrative costs.

The proposed change in section 94.23 to apply the current cap to any applications filed after the effective date of that cap, whether those applications are initial or supplemental, could result in approximately $637,328 in one-time costs. That figure assumes,

conservatively, that all claimants who previously hit a category cap would file a supplemental application. This one-time outlay would not materially change the budgetary impact of this program and would be covered within the existing program funding allocation from the Crime Victims Fund. It would benefit victims by allowing them to receive reimbursement for amounts closer to the actual costs that they incurred due to a terrorist attack.

Based on the number of claims with costs exceeding the caps that were filed in each category and the average excess amount for each category (set out in the chart of proposed changes above), divided by 16 years (the span of time OVC's data regarding claims with costs exceeding the caps covers), OVC estimates that the proposed change to the category caps would create approximately $39,833 in additional claim payment costs per year from the Crime Victims Fund Anti-Terrorism Emergency Reserve. The proposed increase would not change the overall budgetary impact of this program, nor would it materially change the OVC outlays for this program on an annual basis. It would, however, have substantial benefit to the victims that incur costs above the current caps. Moreover, the proposed overall cap of $175,000, is just modestly above the 2006 cap ($105,000) as adjusted for inflation from 2006 to 2023, $158,411.

C. Administrative Procedure Act

This proposed rule concerns matters relating to ''grants, benefits, or contracts,'' 5 U.S.C. 553(a)(2), and is therefore exempt from the requirement of notice and comment and a 30-day delay in the effective date. Nevertheless, in its discretion, OVC has decided to solicit comments on this proposed rule.

D. Executive Order 13132—Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order No. 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Executive Order 12988—Civil Justice Reform (Plain Language)

This proposed rule meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order No. 12988. Pursuant to section 3(b)(1)(I) of the Executive Order, nothing in this or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the Program that is the subject of this proposed rule is intended to create any legal or procedural rights enforceable against the United States, except as the same may be contained within 28 CFR part 94, subpart A.

F. Unfunded Mandates Reform Act of 1995

This proposed rule, when finalized, would not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Congressional Review Act

This proposed rule is not a major rule as defined by 5 U.S.C. 804.

H. Paperwork Reduction Act

This proposed rule does not propose any new, or changes to existing, ''collection[s] of information'' as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and its implementing regulations at 5 CFR part 1320. The existing collection (ITVERP Application, 1121–0309) has been cleared by the Office of Management and Budget.

List of Subjects in 28 CFR Part 94

Administrative practice and procedure, Victim compensation, Claims program, International terrorism, Victim expense reimbursement, Victims of Crime Act (VOCA) of 1984.

Accordingly, for the reasons set forth in the preamble, OVC proposes to amend part 94 of chapter I of Title 28 of the Code of Federal Regulations as follows:

PART 94—CRIME VICTIM SERVICES

■ 1. The authority citation for Part 94 continues to read as follows:

Authority: 34 U.S.C., 20103, 20106, 20110(a), 20111.

■ 2. Amend § 94.12 by:
■ a. In paragraph (c), in the first sentence, removing '': except that any reimbursement received under this subpart shall be reduced by the amount of'' and adding in its place ''; and ''; and adding a new sentence to the end of the paragraph.
■ b. In paragraph (g), removing the phrase ''travel for not more than two family members'' and adding in its place the phrase ''travel for not more than five family members'';
■ c. In paragraph (i), removing the term ''mental retardation'' and adding in its place the term ''cognitive disability'';
■ d. In paragraph (r), adding the word ''typically'' before ''are included in the category of'';
■ e. In paragraph (u)(2)(ii), at the end of the paragraph, removing the word ''or'';
■ f. In paragraph (u)(2)(iii), removing the period and adding in its place ''; or''; and
■ g. Adding paragraph (u)(2)(iv).

The additions read as follows:

§ 94.12 Definitions.

* * * * *

(c) * * * To the extent that a claimant is a member of the U.S. military, and the expenses claimed relate to a terrorist incident occurring in an officially designated combat zone or qualified hazardous duty area, where the member is also entitled to hostile fire pay or imminent danger pay, pursuant to 37 U.S.C. 310, OVC will presume that such pay constitutes a collateral source that offsets the expenses claimed, unless the claimant demonstrates otherwise.

* * * * *

(u) * * *

(2) * * *

(iv) Is otherwise unable to submit a claim as a result of the act of terrorism.

■ 5. Amend § 94.21 in paragraph (a) by adding a new first sentence, to read as follows:

§ 94.12 Eligibility.

(a) Claimants may submit an initial application, and (as necessary) supplemental applications, in the form and manner required by the Director. * * *

* * * * *

■ 6. Revise § 94.23 to read as follows:

§ 94.23 Amount of reimbursement.

Categories of expenses are capped, as set forth in the chart in the appendix to subpart A of part 94. Those caps shall be adjusted on October 1, 2028, and every five years thereafter, to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, during the preceding five years; and otherwise may be adjusted, from time to time, by rulemaking. The cap in effect within a particular expense category at the time that the application (whether initial or supplemental) is received shall apply to all awards under that application. Thus, a claimant whose expenses were not reimbursable due to a previous category cap may file a supplemental application to have expenses considered under the most recent cap.

§ 94.24 [Amended]

■ 7. Amend § 94.24 in the second sentence by removing the phrase ''mailed to the claimant at his last known address'' and adding in its place the phrase ''sent to the claimant electronically (or mailed to his last known address)''.

■ 8. Amend § 94.25 by revising paragraph (b) to read as follows:

§ 94.25 Collateral sources.

* * * * *

(b) Notwithstanding paragraph (a) of this section, the claimant's award under this subpart shall not be reduced by the amount that the claimant receives from a collateral source, nor shall the claimant be required to subrogate the United States to the claim for reimbursement from the collateral source, except when combined reimbursement under this subpart and any collateral source would exceed the actual expense.

■ 9. Revise § 94.31 to read as follows:

§ 94.31 Application procedures.

(a) To receive reimbursement, a claimant must submit a completed application under this program requesting payment based on a detailed itemized list of expenses accompanied by copies of original receipts (if available) or (as permitted by the Director) appropriate alternative documentation or certification.

(b) The claimant must certify under penalty of perjury that the items and amounts submitted for reimbursement are true and correct to the best of his knowledge. In the event that it is later determined that a fraudulent certification was made, the United States may take action to recover any payment made under this section, and pursue criminal prosecution, as appropriate.

■ 10. Amend § 94.32 by:

■ a. Removing the phrase ''file an application'' and adding in its place the phrase ''file an initial application'' wherever it appears; and

■ b. Adding a sentence to the end of the section.

The addition reads as follows:

§ 94.32 Application deadline.

* * * OVC will accept supplemental applications at any time (subject to the Director's reasonable limits on the frequency of submission), provided that the initial application was filed on time.

§ 94.33 [Amended]

■ 11. Amend § 94.33 by removing the phrase ''no identifying information for the victim or representative shall be released'' and adding in its place the phrase ''the Director will make reasonable efforts to minimize and safeguard any victim identifying information that is released to the reviewer''

§ 94.41 [Amended]

■ 12. Amend § 94.41 by:

■ a. In the section heading, removing the words ''Interim emergency'' and adding in their place the word ''Conditional''; and

■ b. Removing the term ''an interim emergency payment'' and adding in its place the term ''a conditional payment'' wherever it appears.

§ 94.42 [Amended]

■ 13. Amend § 94.42 in the first sentence by removing the words ''interim emergency award or final''.

§ 94.51 [Amended]

■ 14. Amend § 94.51 to remove ''initial'' before ''application''.

■ 15. Amend Appendix to Subpart A of Part 94, by revising the Chart of Expense Categories and Limits as follows:

Appendix to Subpart A of Part 94—International Terrorism Victim Expense Reimbursement Program (ITVERP); Chart of Expense Categories and Limits

* * * * *

Expense categories	Subcategories and conditions	Expense limits
Medical expenses, including dental and rehabilitation costs.	Victim's medical care, including, without limitation, treatment, cure, and mitigation of disease or injury; replacement of medical devices, including, without limitation, eyeglasses or other corrective lenses, dental services, prosthetic devices, and prescription medication; and other services rendered in accordance with a method of healing recognized by the jurisdiction in which the medical care is administered. Victim's cost for physiotherapy; occupational therapy; counseling; workplace, vehicle, and home modifications. For example, if a victim were to sustain a physical injury, such as blindness or paralysis, which would affect his ability to perform current professional duties, physical rehabilitation to address work skills would be appropriate.	Up to $80,000.
Mental health care	Victim's (and, when victim is a minor, incompetent, incapacitated, or deceased, or is otherwise unable to submit a claim as a result of the act of terrorism, certain family members') mental health counseling costs.	Up to $20,000.
Property loss, repair, and replacement	Includes crime scene cleanup, and replacement of personal property (not including medical devices) that is lost, destroyed, or held as evidence.	Up to $15,000 to cover repair or replacement, whichever is less.
Funeral and burial costs	Includes, without limitation, the cost of disposition of remains, preparation of the body and body tissue, refrigeration, transportation of remains, cremation, procurement of a final resting place, urns, markers, flowers and ornamentation, costs related to memorial services, and other reasonably associated activities.	Up to $35,000.

Expense categories	Subcategories and conditions	Expense limits
Miscellaneous expenses	Includes, without limitation, temporary lodging up to 30 days, local transportation, telephone costs, etc.; with respect to emergency travel, two family members' transportation costs to country where incident occurred (or other location, as appropriate) to recover remains, care for victim, care for victim's dependents, accompany victim to receive medical care abroad, accompany victim back to U.S., and attend to victim's affairs in host country.	Up to $25,000.

Brent J. Cohen,

Acting Assistant Attorney General, Office of Justice Programs.

[FR Doc. 2025–00071 Filed 1–17–25; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

28 CFR Part 95

[Docket No. OAG 182; AG Order No. 6144–2025]

RIN 1105–AB70

Homicide Victims' Families' Rights Act

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice is proposing a rule to implement the Homicide Victims' Families' Rights Act of 2021. The proposed rule would explain and effectuate the Act's system for reviewing and, as warranted, reinvestigating murders investigated by Federal law enforcement agencies that remain unsolved after three years.

DATES: Written and electronic comments must be sent or submitted on or before March 24, 2025. Comments received by mail will be considered timely if they are postmarked on or before the last day of the comment period. The electronic Federal Docket Management System will accept electronic comments until midnight eastern time at the end of that day.

ADDRESSES: Comments may be mailed to Regulations Docket Clerk, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Room 4234, Washington, DC 20530. To ensure proper handling, please reference RIN 1105–AB70 or Docket No. OAG 182 on your correspondence. You may submit comments electronically or view an electronic version of this proposed rule at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: David J. Karp, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Washington, DC, 202–514–3273.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Posting of Public Comments. Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule via one of the methods and by the deadline stated above. The Department of Justice (''Department'') also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Please note that all comments received are considered part of the public record and made available for public inspection at *http://www.regulations.gov.* Such information includes personally identifying information (''PII'') (such as your name, address, etc.).

Interested persons are not required to submit their PII in order to comment on this rule. However, any PII that is submitted is subject to being posted to the publicly accessible website at *http://www.regulations.gov* without redaction.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Confidential business information identified and located as set forth above will not be placed in the public docket file. The Department may withhold from public viewing information provided in comments that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.* To inspect the agency's public docket file in person, you must make an appointment with the agency. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for agency contact information.

II. Overview

The Homicide Victims' Families' Rights Act of 2021 (''Act'' or ''HVFRA''), which was enacted on August 3, 2022, Public Law 117–164, 136 Stat. 1358, provides a system for the review of case files, and for carrying out further investigation as warranted, in murder cases investigated by Federal law enforcement agencies that have gone unsolved for over three years. The general objective of the Act is to facilitate the identification of the perpetrators of these ''cold case'' murders and thereby help to bring the perpetrators to justice and provide closure for the victims' families.

The Act specifically provides for carrying out case file reviews in cold case murder investigations on application by certain family members of the victim, and for further investigation if the case file review concludes that a full reinvestigation would result in probative investigative leads. The Act also directs the collection and publication of statistics on the number of cold case murders and reports to the House and Senate Judiciary Committees on the operation and results of the system established by the Act.

This proposed rule would add a new part 95 to title 28 of the Code of Federal Regulations to implement the Act. The new part would explain the Act's requirements and key concepts, and it would specify assignments of responsibility and procedures to ensure that the Act is effectively carried out.

III. Legal Authority

The Department of Justice is issuing this rule pursuant to the HVFRA and the authority of the Attorney General under Executive Order 11396, 33 FR 2689 (Feb. 7, 1968).

IV. Section-by-Section Analysis

The proposed rule would provide a statement of purpose in § 95.1 and define key terms in § 95.2. Section 95.3 would explain what is required in cold case murder file reviews. Section 95.4 would set out procedures for victims' family members to apply for file reviews and for action on the applications by the responsible investigative agencies. Section 95.5 would explain the Act's requirements relating to full reinvestigations. Section 95.6 would direct that case file reviews and reinvestigations be carried out in a cohesive manner when multiple agencies are involved. Section 95.7 would address consulting with and informing applicants, and keeping them up to date about case file reviews and reinvestigations. Section 95.8 would articulate the Act's timing rules for successive applications. Sections 95.9, 95.10, and 95.11 would address the Act's requirements relating to compliance, data collection, and annual reports. Section 95.12 would incorporate a provision of the Act that allows the withholding of information whose disclosure would have serious adverse effects or be unlawful. More detailed descriptions of these provisions follow.

A. Section 95.1—Purpose

The Act creates a system for reviewing and, as warranted, reinvestigating murder cases previously investigated by Federal agencies in which ''all probative investigative leads have been exhausted'' and ''no likely perpetrator has been identified'' after three years, HVFRA 12(6), upon application by certain persons. Section 95.1 would state this general purpose of the Act in terms similar to the Act's full title (''To provide for a system for reviewing the case files of cold case murders at the instance of certain persons, and for other purposes.'').

B. Section 95.2—Definitions

1. Paragraph (a)—Designated Person

Section 95.2(a) would define ''designated person'' for purposes of the Act, which refers to the class of individuals who may apply for cold case murder reviews. Section 12(1) and (2) of the Act state that the term includes an ''immediate family member,'' defined to mean a parent, parent-in-law, grandparent, grandparent-in-law, sibling, spouse, child, or step-child of a murder victim, and ''someone similarly situated'' to an immediate family member, ''as defined by the Attorney General.'' While the express statutory definition of immediate family member includes a parent, child, or step-child, it does not include a step-parent. Pursuant to the Attorney General's authority under section 12(1) of the Act, § 95.2(a) would define ''designated person'' to include a step-parent, as a person ''similarly situated'' to a parent, in addition to immediate family members as defined in the statute.

2. Paragraph (b)—Victim

Section 95.2(b) of the proposed rule, as provided in section 12(3) of the Act, would define ''victim'' to mean a natural person who died as a result of a cold case murder.

3. Paragraph (c)—Murder

Section 95.2(c) of the proposed rule would implement section 12(4) of the Act, which defines ''murder'' to mean ''any criminal offense under section 1111(a) of title 18, United States Code, or any offense the elements of which are substantially identical to such section.''

Section 1111 of title 18 of the United States Code is the Federal murder offense that applies directly in cases arising in the special maritime and territorial jurisdiction of the United States, which includes Federal lands and facilities as provided in 18 U.S.C. 7(3). The first sentence of section 1111(a) defines ''murder'' as ''the unlawful killing of a human being with malice aforethought.'' Malice aforethought is generally understood to mean killing a person intentionally, knowingly, or with extreme recklessness, albeit with variations in the verbal formulas that courts use to explicate the concept. *See, e.g., United States* v. *Begay,* 33 F.4th 1081, 1091 (9th Cir. 2022). The second sentence of section 1111 specifies that certain types of murder are first-degree murder, including premeditated murders and murders committed in the course of other specified offenses. The list of predicate offenses for this purpose includes ''arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, [and] robbery.'' Courts have interpreted the sentence in conformity with the traditional felony-murder doctrine, which categorically treats the specified offenses as involving murder if someone dies during the commission of the offense, without requiring any particular culpability of the offender with respect to resulting death. *See, e.g., United States* v. *Garcia Ortiz,* 528 F.3d 74, 80–81 (1st Cir. 2008); *United States* v. *Tham,* 118 F.3d 1501, 1508 (11th Cir. 1997).

The inclusion of ''any criminal offense under section 1111(a) of title 18'' in the definition of murder in section 12(4) of the Act broadly brings within the scope of the Act murders committed on Federal lands, such as national parks and military bases. The proposed rule would parallel the statutory inclusion of murders that directly violate 18 U.S.C. 1111 by providing in the first sentence of § 95.2(c)(1) that murder ''means an offense under 18 U.S.C. 1111.''

The second clause of the statutory definition of ''murder'' in section 12(4) of the Act refers to offenses whose elements are ''substantially identical'' to section 1111(a). The first sentence of paragraph (c)(1) in § 95.2 of the proposed rule would interpret this to mean other Federal offenses ''that incorporate[ ] by reference the elements of 18 U.S.C. 1111.'' This interpretation understands the ''substantially identical'' language in section 12(4) of the Act to include offenses whose substantive elements are identical to elements of the substantive offense defined in 18 U.S.C. 1111(a), regardless of differences in jurisdictional elements. For example, the offense of murdering a Federal officer, in violation of 18 U.S.C. 1114(1), is within the scope of the HVFRA, although the basis for jurisdiction under 18 U.S.C. 1114 (Federal officer victim) is different from the basis for jurisdiction under 18 U.S.C. 1111 (special maritime and territorial jurisdiction).

The requirement of substantial identity to 18 U.S.C. 1111 is satisfied by, and only by, offenses that appropriate the elements of section 1111 by cross-reference. Other Federal homicidal offenses (except those cross-referencing section 1111) define their elements in varying ways—*see, e.g.,* 18 U.S.C. 1112 (manslaughter); 21 U.S.C. 841(b) (up to life imprisonment for drug trafficking if death results from use of controlled substance)—but they are not defined to be the killing of a human being with malice aforethought as that concept is understood in section 1111. The offenses identified in § 95.2(c)(1), all of which incorporate by reference the elements of section 1111, provide a comprehensive compilation of the Federal offenses whose substantive elements match those of section 1111.

Offenses can incorporate by reference the elements of 18 U.S.C. 1111, and hence be ''substantially identical'' to section 1111, in three ways—by expressly cross-referencing section 1111, *e.g.,* 18 U.S.C. 1114(1); by referring to ''murder'' without further definition, which is understood to mean murder as defined in 18 U.S.C. 1111(a),

e.g., 18 U.S.C. 1153; *see United States* v. *Antelope,* 430 U.S. 641, 642–43, 647–48 & n.9 (1977); or by referencing a broader class of crimes that includes 18 U.S.C. 1111, *e.g.,* 18 U.S.C. 1152. Regardless of the particular way in which an offense incorporates by reference the elements of 18 U.S.C. 1111, offenses that satisfy this criterion are within the scope of the HVFRA.

The initial language in § 95.2(c)(1) includes ''an offense under 18 U.S.C. 1111.'' This encompasses murders committed in the special maritime and territorial jurisdiction of the United States, *see* 18 U.S.C. 7, in which section 1111 applies directly.

Section 95.2(c)(1)(i), which refers to 18 U.S.C. 1152 and 1153, confirms the Act's coverage of Indian country murders. The first paragraph of section 1152 says that Federal criminal laws that apply ''in any place within the sole and exclusive jurisdiction of the United States . . . shall extend to the Indian Country''—the referenced Federal criminal laws include section 1111(a)—subject to exceptions in the second paragraph, such as offenses committed by Indians against Indians. Section 1153 reaches ''major crimes'' committed by Indians in Indian country, including ''murder,'' which is understood to mean murder as defined in section 1111(a). Section 95.2(c)(1)(i) would make the coverage of Indian Country murders explicit.

Section 1114 of title 18 proscribes killings of Federal officers or employees performing their duties, and provides that violators shall be punished ''in the case of murder, as provided under section 1111.'' Section 1114 through this cross-reference expressly incorporates the elements and penalties of section 1111, satisfying in such cases the Act's coverage of offenses whose elements are substantially identical to section 1111(a). Section 95.2(c)(1)(ii) would make the Act's coverage of murders of Federal officers or employees in violation of section 1114 explicit, as well as murders of federally protected persons under several other provisions. The other provisions, and their relevant language and subdivisions that incorporate the elements of section 1111(a) by reference, are:

- 18 U.S.C 115(b)(3) (murder under statute protecting certain Federal officials, former officials, and their immediate family members ''shall be punished as provided in section[ ] 1111'');
- 18 U.S.C. 351(a) (killing of certain high level Federal officials ''shall be punished as provided by section[ ] 1111'');
- 18 U.S.C. 1116(a) (killing of foreign official, official guest, or internationally protected person ''shall be punished as provided under section[ ] 1111'');
- 18 U.S.C. 1121(a) (whoever intentionally kills a person aiding a Federal criminal investigation ''shall be sentenced according to the terms of section 1111'');
- 18 U.S.C. 1503(b)(1), 1512(a)(3)(A), 1513(a)(2)(A) (killings under Federal obstruction of justice provisions subject to ''the punishment provided in section[ ] 1111'');
- 18 U.S.C. 1751(a) (killing of President, Vice President, or members of their staffs ''shall be punished as provided by section[ ] 1111'');
- 18 U.S.C. 1841(a), (b)(1) (applying section 1111 to murder of child in utero and applying penalties of section 1111 to intentional killing of child in utero under other specified provisions); and
- 7 U.S.C. 2146(b); 15 U.S.C. 1825(a)(2)(C); 21 U.S.C. 461(c), 675, 1041(b) (killing of persons while engaged in or on account of their performance of official duties under Federal regulatory schemes punishable ''as provided under section[ ] 1111'').

Section 1119(b) of title 18, in relevant part, provides that killing by a U.S. national of a U.S. national who is outside the United States but within the jurisdiction of another country ''shall be punished as provided under section[ ] 1111.'' Section 2332(a)(1), relating to the context of terrorist murders of U.S. nationals abroad, provides that ''if the killing is murder (as defined in section 1111(a))'' the perpetrator shall be ''punished by death or imprisonment for any term of years or for life.'' Section 95.2(c)(1)(iii) would expressly confirm the Act's coverage of murder offenses under these provisions, which proscribe killings of U.S. nationals outside of the United States.

Section 95.2(c)(1)(iv) would identify other Federal murder offenses that satisfy the criteria for coverage by the Act. These are:

- 18 U.S.C. 36(b)(2) (providing, in relation to drive-by shootings in the context of major drug offenses, that a killing that is ''a first degree murder (as defined in section 1111(a))'' is punishable by death or imprisonment for any term of years or life and that ''a murder other than a first degree murder (as defined in section 1111(a))'' is punishable by imprisonment for any term of years or life);
- 18 U.S.C. 924(j)(1) (providing, in relation to killing with a firearm in a Federal crime of violence or drug trafficking crime, that ''if the killing is a murder (as defined in section 1111),'' the punishment is death or imprisonment for any term of years or life);
- 18 U.S.C. 930(c) (killings in the course of armed attacks in or on Federal facilities ''shall be punished as provided in section[ ] 1111'');
- 18 U.S.C. 1118 (person serving Federal life term of imprisonment who commits ''a first degree or second degree murder (as defined in section 1111)'' shall be punished by death or life imprisonment);
- 18 U.S.C. 1120 (killing by person escaped from a Federal correctional institution where he was serving a life term ''shall be punished as provided in section[ ] 1111'');
- 18 U.S.C. 1652 (U.S. citizen pirate who ''commits any murder . . . on the high seas . . . shall be imprisoned for life'');
- 18 U.S.C. 1958 (murder for hire punishable by death or life imprisonment);
- 18 U.S.C. 1959(a)(1) (murder in aid of racketeering punishable by death or life imprisonment);
- 18 U.S.C. 2245 (murder in course of sex offenses punishable by death or up to life imprisonment);
- 18 U.S.C. 3261(a) (members of, and persons accompanying, the armed forces who engage in conduct that would constitute a felony if engaged in within the special maritime and territorial jurisdiction of the United States—which includes murder under 18 U.S.C. 1111—shall be punished as provided for that offense);
- 18 U.S.C. 3273(a) (certain Federal personnel stationed or deployed in Canada who engage in conduct that would be federally prosecutable had the conduct occurred within the special maritime and territorial jurisdiction of the United States—which includes murder under 18 U.S.C. 1111—shall be imprisoned as provided for that offense); and
- 49 U.S.C. 46506(1) (individual on an aircraft in the special aircraft jurisdiction of the United States ''who commits an act that . . . if committed in the special maritime and territorial jurisdiction of the United States . . . would violate section . . . 1111 . . . shall be . . . imprisoned under that section'').

The proposed rule's definition of covered ''murder'' offenses in § 95.2(c)(1) accords with and encompasses the types of offenses that the legislative history specifically references as within the intended scope of the Act. The Act's sponsor, Rep. Swalwell, stated regarding the Act: ''It also assists investigators in homicide cases that serve important underserved communities such as Native Americans

on Indian Reservations, Federal law enforcement officers killed in action, U.S. citizens who are murdered abroad, or homicides that take place on Federal land and the high seas.'' 168 Cong. Rec. H3877; *see id.* H3876 (remarks of Rep. Bentz) (''The majority of cold cases at issue under this bill are likely to be cases arising from Tribal jurisdictions.'').

In the sponsor's statement, ''homicides that take place on Federal land and the high seas'' is a reference to the special maritime and territorial jurisdiction of the United States, *see* 18 U.S.C. 7, in which 18 U.S.C. 1111 applies directly. The prefatory language in § 95.2(c)(1), referring to ''an offense under 18 U.S.C. 1111,'' includes these cases. ''Native Americans on Indian Reservations'' in the statement refers to Indian Country cases, which are prosecuted under 18 U.S.C. 1152 and 1153. Section 95.2(c)(1)(i), which refers to 18 U.S.C. 1152 and 1153, confirms the Act's coverage of Indian country murders. ''Federal law enforcement officers killed in action'' alludes to murders in violation of 18 U.S.C. 1114, which is included in § 95.2(c)(ii). ''U.S. citizens who are murdered abroad'' refers to the offenses that proscribe extraterritorial killings of U.S. nationals, 18 U.S.C. 1119 and 2332, which are included in § 95.2(c)(1)(iii).

In addition to clarifying the types of offenses that are ''murders'' for purposes of the Act, the proposed rule, in § 95.2(c)(2), would identify certain types of offenses that are not covered.

Section 95.2(c)(2)(i) would state that murders in which the victims died before January 1, 1970, are not covered. This provision implements section 11 of the Act, which limits the Act's applicability to cold case murders occurring on or after January 1, 1970.

Section 95.2(c)(2)(ii) would provide that the scope of the Act and the proposed rule is limited to cases involving murders in violation of Federal law, as opposed to offenses that violate only the laws of a State, the District of Columbia, or a U.S. territory. While Federal agencies may help State and local agencies in the investigation of non-Federal crimes, *see, e.g.,* 28 U.S.C. 540–540B, that does not bring those investigations within the scope of the Act, which is intended to apply ''[i]n federal cases.'' H. Rep. No. 117–280, at 6; *see* 168 Cong. Rec. H3876 (remarks of Rep. Bentz) (''[T]his bill would only apply to Federal cases of murder, and it wouldn't apply to murder cases investigated by State and local law enforcement, which are most cases.''). The Act was not intended to supplant the role of State and local law enforcement, which have primary responsibility for the investigation of murders under the laws of their jurisdictions and are best situated to review and reinvestigate cold cases involving those crimes; rather, the expectation was that the enactment of such a law for Federal cases ''will . . . serve as a crucial model for the States to . . . adopt a local Homicide Victims Bill of Rights.'' 168 Cong. Rec. H3877 (remarks of Rep. Swalwell).

As a corollary to the limitation to cases involving Federal crimes, case file reviews and reinvestigation are not required in cases in which it has been determined that Federal jurisdiction is lacking. For example, suppose that a witness or informant in a Federal case is killed and the case is initially investigated as a possible retaliatory murder under 18 U.S.C. 1513. Interviews with witnesses to the incident show, however, that the killing resulted from the victim's provoking a bar fight with a stranger that turned lethal, with no connection to the victim's involvement in Federal proceedings. Such a case is outside the scope of the Act because it does not involve a murder in violation of Federal law.

More broadly, § 95.2(c)(2)(iii) would provide that the Act's scope does not include incidents in which there was no murder as defined in § 95.2(c)(1). For example, suppose that a Federal agent is found dead, and the case is initially investigated as a possible murder in violation of 18 U.S.C. 1114 because the agent had been pursuing dangerous criminals who would have reason to kill him. The investigation is closed when a fuller examination of the evidence shows that the agent died of natural causes or because of an accident. Such cases are outside the scope of the Act because its application is limited to murder cases that satisfy certain criteria. *See* HVFRA 12(6).

Conversely, a case may be within the scope of the Act even if it was not initially investigated as a murder. For example, the investigation may begin as a missing person case, in which it is uncertain whether the person is alive or dead. Or it may start as a case involving a fatality, but one in which the known facts are consistent with accidental death, suicide, or involuntary manslaughter. As the case progresses, however, fuller knowledge of the facts and circumstances indicates the commission of a murder as defined in § 95.2(c). If the other conditions defining a ''cold case murder'' are also satisfied, *see* HVFRA 12(6), such a case would be subject to the Act.

The definition of ''murder'' in section 12(4) of the Act, and its construction in § 95.2(c) of the proposed rule, also limit the class of Federal crimes that are subject to the Act. Beyond the statutes identified in § 95.2(c)(1), there are many other provisions of Federal law that define and prescribe penalties for homicidal crimes. For example, 21 U.S.C. 841 prohibits producing or distributing a controlled substance, and it provides for imprisonment between 20 years and life if death results from the use of the controlled substance. Such provisions, though they include parts defining homicidal offenses, are not within the scope of the Act because their elements are not substantially identical to 18 U.S.C. 1111, as required by the statutory and regulatory definition of ''murder'' for purposes of the Act.

4. Paragraph (d)—Agency

Section 95.2(d) of the proposed rule would track the definition of ''agency'' in section 12(5) of the Act, which means Federal law enforcement entities with jurisdiction to engage in the detection, investigation, or prosecution of cold case murders. The proposed rule would explain that this definition excludes State and local law enforcement agencies and agencies of the District of Columbia and U.S. territories from the class of agencies subject to the Act.

5. Paragraph (e)—Principal Investigative Agency

Section 95.2(e) of the proposed rule would define ''principal investigative agency'' to mean ''the federal investigative agency that had the primary responsibility for the initial investigation of a murder.'' Section 95.2(e) would exclude a Federal agency from this definition if a ''a murder was investigated by state or other non-federal authorities and the role of federal agencies was the provision of investigative assistance,'' if ''a murder was investigated by a federal agency but thereafter state or other non-federal authorities assumed the primary responsibility for the investigation,'' or if the Federal agency is a prosecutorial agency of the Department of Justice. The definition would serve three purposes:

First, more than one Federal agency may be involved in the investigation of a murder. The Act presupposes that the case file reviews and reinvestigations it requires will be carried out by the agency that ''conducted the initial investigation,'' as provided in section 10 of the Act. This is naturally understood to refer to the agency with the lead role in the prior investigation, as opposed to agencies that just assisted or played a

peripheral role. The agency with the lead role in the prior investigation logically should be responsible for receiving and acting on applications by family members of the victim for case file reviews. That agency is best situated to carry out such reviews and to undertake further investigation if warranted. The definition of ''principal investigative agency'' in the proposed rule accordingly would assign these functions to the Federal investigative agency that had the primary responsibility for the initial investigation. If it is unclear which of a number of Federal agencies had primary responsibility—for example, because different agencies had the lead role at different stages in the previous investigation—§ 95.4(c)(1) of the rule would make them jointly responsible for ensuring that the Act's requirements are carried out.

Second, the proposed rule would make clear that the Federal agencies with responsibilities under the Act are Federal investigative agencies, as opposed to prosecutorial agencies. The prosecution of Federal crimes is carried out by the United States Attorneys' Offices and by the prosecutorial components of the Justice Department's litigating divisions, such as the Criminal Division and the National Security Division. Federal prosecutors may be involved to varying degrees at the investigative stage of murder cases within Federal jurisdiction, and they are necessarily involved where there is a need to secure or use legal process in the investigation, such as search warrants or grand jury subpoenas. Nevertheless, the functions required under the Act are properly carried out by investigative agencies rather than prosecutors, and the proposed rule would specify that the Justice Department's prosecutorial units are not to be considered the principal investigative agency in any case.

Third, in cases in which there is concurrent State and Federal jurisdiction over a murder, both State and Federal authorities may be involved in the investigation. The question then arises whether the investigation was a Federal investigation, which is within the scope of the Act, or a State investigation, which is not. *See* 168 Cong. Rec. H3876 (remarks of Rep. Jackson Lee) (stating that the Act applies ''in cases investigated at the Federal level''); *id.* (remarks of Rep. Bentz) (stating that the Act ''wouldn't apply to murder cases investigated by State and local law enforcement'').

The proposed rule's definition of ''principal investigative agency'' would provide for Federal agency responsibility where the Federal agency was primarily responsible for the investigation of a murder, but not where the investigation was pursued as a State matter and the role of Federal agencies was limited to providing investigative assistance. Federal law enforcement agencies frequently provide investigative assistance to their State and local counterparts, which may involve such measures as sharing information and intelligence, carrying out forensic testing and analysis, interviewing witnesses, and other collection of evidence and information. Federal legal process may also come into play, complementing and supplementing the capabilities of the responsible State agencies—for example, execution of Federal search warrants or subpoenas in places outside the State agency's jurisdiction, or at the early stages of an investigation that is ultimately pursued primarily as a State matter. The proposed rule's definition would make it clear that such measures in the regular conduct of Federal-State cooperation in criminal investigations do not convert State investigations into Federal investigations.

6. Paragraph (f)—Initial Investigation

Section 95.2(f) would define ''initial investigation'' to mean ''the investigation of a murder before it became a cold case murder.'' This is a technical definition that, in the context of the proposed rule, would assign responsibility for case file reviews and potential reinvestigation of a cold case murder to the agency that previously investigated the murder.

7. Paragraph (g)—Cold Case Murder

Section 95.2(g) would track the definition of ''cold case murder'' in section 12(6) of the Act. The conditions in the definition are that (i) the time of the murder's commission (interpreted to mean the time when the victim died) was more than three years prior to the application for case file review, (ii) the murder was previously investigated by a Federal law enforcement entity, (iii) all probative leads have been exhausted, and (iv) no likely perpetrator has been identified. Murders involving multiple perpetrators in which one or more of them have been identified are not within the scope of the Act.

8. Paragraph (h)—Probative Leads

Section 95.2(h) would define ''probative leads'' to mean ''information that identifies the perpetrator or that provides a sufficient likelihood of enabling the identification of the perpetrator to warrant further investigation, in the agency's judgment and consistent with the agency's policies and practices regarding the use of investigative methods.'' This key concept in the Act determines, among other things, whether the results of a case file review warrant further investigation, and what the objective of a reinvestigation should be. The Act uses this term or similar phrases in a number of places, but with varying wording and without further definition. *See* HVFRA 2(a) (requiring case file review to determine if a full reinvestigation would result in ''the identification of probative investigative leads or a likely perpetrator''); *id.* (2)(b)(4) (requiring update of case file using the most current investigative standards to the extent it would ''help develop probative leads''); *id.* (2)(c) (requiring certification that ''all probative investigative leads have been exhausted or that a likely perpetrator will not be identified''); *id.* 4(a) (requiring reinvestigation if ''a full reinvestigation . . . would result in probative investigative leads''); *id.* 4(b) (requiring analysis of all evidence in a reinvestigation ''for the purpose of developing probative investigative leads or a likely perpetrator''); *id.* 12(6)(C) (defining ''cold case murder'' in part as one ''for which all probative investigative leads have been exhausted'').

These provisions do not require pursuit of all possible leads, but only those that are ''probative.'' Determining what leads are ''probative,'' so as to warrant further investigation, calls for exercises of judgment by the investigative agency. The reference to ''probative'' leads also raises the question—probative of what?—a matter for which further definition is required to provide clear guidance to investigative agencies in discharging their responsibilities under the Act.

Section 95.2(h) in the proposed rule would provide the needed clarification by defining this term—probative leads—to mean information that identifies the perpetrator, or that provides a sufficient likelihood of enabling the identification of the perpetrator so as to warrant further investigation in the agency's judgment. The definition is based on the contexts in which the Act uses the term or similar terms and the Act's general design and purpose to address and solve cases in which ''no likely perpetrator has been identified.'' HVFRA § 12(6)(D). Variant terminology, ''probative investigative leads,'' which is used in some provisions of the Act, is understood to have the same meaning.

The proposed rule's definition of ''probative leads'' also would specify that the agency's policies and practices

regarding the use of investigative methods must be taken into account—policies and practices that affect whether leads are potentially probative regarding the perpetrator's identity, as bearing on the reliability of investigative methods and what methods would actually be used in a reinvestigation. In the investigation of murders and other crimes, Federal agencies are guided and constrained by policies and practices that ensure the reliability and effectiveness of the methods utilized in the investigation, and ensure respect for legal norms and the privacy of persons affected by the investigation. These policies and practices apply in reinvestigations under the HVFRA as they do in other investigative contexts. To the extent that a method would not be utilized under the applicable policies and practices, the theoretical possibility of using it is not a positive factor in judging whether further investigation is warranted under the Act.

For example, the legislative history of the Act emphasizes the use of technological improvements to solve cold cases:

> Because advances in science progress rapidly, new technology could have been discovered and implemented in the time since detectives last revisited the case. The Office of Justice Programs reports advancements in DNA technology are breathing new life into old, cold, and unsolved criminal cases. Investigators in California used new DNA technology to apprehend the Golden State Killer, a case that had remained cold for decades.

H. Rep. No. 117–280, at 6 (internal quotation marks omitted); *see* 168 Cong. Rec. H3877 (remarks of Rep. Swalwell) (''Improvements in technology . . . will also better equip law enforcement agencies with tools . . . that would assist in identifying new leads . . . to solve crimes'').

As the Committee Report notes, H. Rep. No. 117–280, at 6, the emergence and progressive development of DNA identification technology has revolutionized the investigation of cold cases and has produced remarkable results in innumerable cases. At the same time, the use of DNA methods is subject to policies and practices that promote its sound use and guard against adverse effects. Regular DNA testing in criminal investigations is carried out in conformity with the rules and procedures of the Combined DNA Index System. *See generally Maryland* v. *King,* 569 U.S. 435, 442–46, 463–66 (2013). The use of forensic genetic genealogy—referenced in the Act's Committee Report for solving the Golden State Killer case—is subject to policies tailored to its operation and characteristics. *See United States Department of Justice, Interim Policy, Forensic Genetic Genealogical DNA Analysis and Searching* (Nov. 1, 2019).

Thus, in assessing whether further investigation is warranted under the HVFRA, it is not sufficient to note that there is some retained evidence in the case to which an investigative method or technique might in theory be applied. The agency would also need to consider whether and to what extent the relevant investigative method would actually be used in a reinvestigation, consistent with applicable policy and practice, and whether it holds sufficient promise under the facts of the case to warrant further investigation in the agency's judgment. For example, if a family member of the victim sought reopening of a cold case murder investigation, based on a novel DNA identification method they read about that has not been scientifically validated, an agency would not be required to act on such a request under the HVFRA if it would not use that unproven method in other investigative contexts.

The same consideration applies in relation to other methods the use of which is restricted or forgone under an agency's general policies and practices. For example, in a cold case murder, a relative of the victim may seek to have the victim's body exhumed for purposes of additional examination or forensic testing. Investigative agencies may not often agree with such requests. Rather, the likelihood that significant new information will be obtained is assessed, and any potential value is balanced against the sensitivity of disinterring the deceased. General policies and practices regarding exhumation need to be taken into account in assessing whether it should be done in a case subject to the HVFRA, as in other investigative contexts.

While the requirement under the Act to pursue ''probative leads,'' as defined in § 95.2(h), pertains only to matters that could facilitate the identification of the perpetrator, this does not limit the authority of any agency to carry out case file reviews or investigate or reinvestigate murder cases for other purposes. As with other aspects of the Act, this proposed rule would only articulate what agencies must do to comply with the Act and would not restrict their ability to go beyond the Act's requirements, on their own initiative or as requested by others. In relation to investigative leads, in particular, agencies are free to review and reinvestigate murder cases for any lawful purpose, such as learning more about the circumstances of a murder or what happened to the victim, regardless of whether the review or reinvestigation may help to identify the perpetrator.

C. Section 95.3—Case File Review

Section 95.3 of the proposed rule would implement section 2 of the Act, relating to case file reviews.

Section 95.3(a) of the proposed rule would provide for review of case files upon written application by one designated person, following section 2(a) of the Act.

Section 95.3(b) of the proposed rule would reproduce the required elements of a case file review, as set forth in section 2(b) of the Act, and explain specifically how they should be carried out by reviewers. Paragraphs (1) through (3) of § 95.3(b) would detail the requirements for reviewing what investigative steps may have been missed, whether witnesses should be interviewed or reinterviewed, and whether all appropriate forensic testing and analysis was performed in the first instance or if additional testing may be productive.

Paragraph (4) in § 95.3(b) would resolve ambiguous language in section 2(b)(4) of the Act, which requires that a case file review include ''an update of the case file using the most current investigative standards as of the date of the review to the extent it would help develop probative leads.'' The initial phrase in this quoted language, ''an update of the case file,'' might be understood to require technical enhancements of the case file, such as digitizing documents and creating links to other records. The latter language, ''using the most current investigative standards as of the date of the review,'' would more naturally be understood as requiring consideration of whether reinvestigation in conformity with current investigative standards would help develop probative leads.

Section 95.3(b)(4) of the proposed rule would give weight to the latter language in interpreting section 2(b)(4) of the statute because it is more consistent with the statutory context of case file review to determine whether reinvestigation is warranted, and because an intended aspect of the review would otherwise not be referenced in the statute. The other three paragraphs in section 2(b) of the Act are concerned respectively with whether there were missed steps in the original investigation, whether there were shortfalls in interviewing witnesses, and whether there were shortfalls in forensic testing and analysis. They do not require consideration of whether there were shortfalls in comparison with current investigative standards, though such

consideration should be part of case file review in unsolved murder cases—including in particular Indian country murders—in line with the legislative intent in the HVFRA:

> The majority of cold cases at issue under this bill are likely to be cases arising from Tribal jurisdictions . . . . [E.O. 13898] took steps to try to solve cold cases in Tribal jurisdictions . . . creat[ing] the Operation Lady Justice Task Force . . . . In its first year, this task force opened seven offices across the country to address the number of missing and murdered indigenous women. The task force held listening sessions, Tribal consultations, webinars, meetings with law enforcement, and victims' services programs, and formed domestic violence and sexual assault coalitions . . . . The task force put out guidance and protocols, developed relationships with entities like missing persons clearing-houses, began training for investigators and volunteers, and started a public awareness campaign . . . . This legislation is cut from similar cloth . . . .

168 Cong. Rec. H3876–77 (remarks of Rep. Bentz); *see id.* H3878 (''The HVFRA assists families and loved ones of homicide victims by . . . [p]roviding a full reinvestigation using the most up-to-date technologies and investigative standards''); *About DOJ Efforts to Address MMIP, http://www.justice.gov/tribal/mmip/about* (containing a description and sources regarding enhanced investigative measures, relating to missing or murdered indigenous persons, under E.O. 14053 and 13898).

Paragraph (5) of § 95.3(b) would direct the reviewer to notify any other known Federal investigative agency that has been involved in the case and to consider any information provided by such other agency. The Act aims to ensure that reinvestigation decisions and the conduct of reinvestigations are informed by all available evidence. *See* HVFRA 4(b), 6(a). Reaching out to other agencies that have investigated or participated in the investigation of a murder is instrumental to realizing this objective. For example, another Federal investigative agency may have additional information about the case because it initially responded to or investigated the crime before engaging the principal investigative agency, or because it assisted the principal investigative agency in carrying out its investigation. The requirements of § 95.3(b)(5) accordingly would help to ensure that reinvestigation decisions and the conduct of reinvestigations are informed by all available evidence.

Section 95.3(c) of the proposed rule would implement section 2(d) of the Act, which bars having the reviewer be a person who previously investigated the murder. The proposed rule would add that this restriction does not limit the reviewer in getting information from or consulting with people who were previously involved. Consulting such people may be especially valuable in understanding the case, and the reasons why things were done or not done in the previous investigation, and doing so does not conflict with the Act's objective of having ''fresh eyes'' cast on the case. H. Rep. No. 117–280, at 6; 168 Cong. Rec. H3876, 3879 (remarks of Rep. Jackson Lee).

Section 95.3(d) of the proposed rule would track section 2(e) of the Act, which requires the agency to promptly notify the applicant regarding receipt of the application and the applicant's rights under the Act.

Section 95.3(e) of the proposed rule would implement section 2(c) of the Act, which states that case file review is unnecessary where the case ''does not satisfy the criteria for a cold case murder,'' and directs the agency to certify in such a case ''that final review is not necessary because all probative investigative leads have been exhausted or that a likely perpetrator will not be identified.'' The certification described in section 2(c) does not reflect the circumstances in which the criteria for a cold case murder under the Act are not satisfied. Rather, the criteria for a ''cold case murder'' are not satisfied if the murder was committed within three years prior to the application, the murder was not previously investigated by a Federal law enforcement entity, all probative investigative leads have not been exhausted, or a likely perpetrator has been identified. HVFRA 12(6). To resolve this inconsistency, the proposed rule would provide that the agency is to certify in such a case that the cold case murder criteria are not satisfied and to inform the applicant of the reason for the denial.

D. Section 95.4—Review Procedures

Section 95.4(a) of the proposed rule would implement section 3 of the Act, which requires each agency to develop a written application to be used in requesting case file reviews. The proposed rule would add that this requirement can be satisfied by an agency's adopting a standard form developed by the Government or another organizational unit of the Government.

Section 95.4(b) would state that an application for case file review may be denied if it is submitted to the wrong agency, *i.e.,* an agency that did not previously investigate the murder or was not the principal investigative agency in the investigation. However, in such a case, the proposed rule would require the agency that receives the application to advise the applicant of the problem, and, if that agency is aware of another Federal investigative agency that was the principal investigative agency, to transfer the application to the appropriate agency if the applicant so wishes. If no Federal agency was the principal investigative agency in the initial investigation, then the case is outside the scope of the Act, but the proposed rule would direct the agency to which the application was submitted to point the applicant toward any known State or local agency that investigated the case.

Section 95.4(c)(1) would address situations in which more than one agency participated in the investigation of a murder. It would require coordination among the agencies so that there is only one case file review or full reinvestigation going on at any one time, following sections 2(f), 4(d), and 10 of the Act. The proposed rule generally assigns responsibility for case file reviews and reinvestigation to the principal investigative agency in the initial investigation. In case of disagreement among the agencies involved about who had primary responsibility for the prior investigation, § 95.4(c)(1) would direct them to jointly consider the application and collaborate in carrying out any case file review or reinvestigation, or responsibility for those functions could be assumed by or assigned to one of the agencies.

Section 95.4(c)(2) would address situations in which a family member of the victim submits an application for case file review, and then another family member submits an application with respect to the same victim during the pendency of the first application or a resulting case file review or reinvestigation. The latter application would conflict with the specification in section 2(a) of the Act that ''one designated person'' may apply for a case file review, which ensures that the responsible agency can deal in an orderly and efficient way with a single family contact. Section 95.4(c)(2) would provide that the agency need not take any action based on the later application, but in such a case the agency shall advise the later applicant that there was an earlier application, and the agency may consider any information provided by the later applicant.

Section 95.4(c)(3) would state that only one case file review shall be undertaken at any one time with respect to the same cold case murder victim, tracking section 2(f) of the Act. The proposed rule would add that, for cases in which multiple applications are

received with respect to different victims of a murder, any resulting case file reviews may be consolidated. While the Act does not require consolidation in the latter circumstance, conducting a single unified case file review may further the Act's objective of ensuring that all available evidence is fully considered.

Section 95.4(d) would implement section 2(g) and (h) of the Act, setting up a general six-month time limit for completing case file reviews, but allowing one extension of up to six months in certain circumstances.

E. Section 95.5—Full Reinvestigation

Section 95.5(a) of the proposed rule would require a full reinvestigation if a case file review concludes that it would result in probative leads, following section 4(a) of the Act. Section 95.5(a) would refer to the proposed rule's definition of ''probative leads'' in § 95.2(h), which requires reinvestigation if there is information that identifies the perpetrator or that provides a sufficient likelihood of enabling the identification of the perpetrator to warrant further investigation, in the agency's judgment and consistent with its policies and practices for use of investigative methods. In referring to the conclusion of a case file review, the Act contemplates, in accordance with its objective of solving cold case murders, that the agency will consider all the information it has at the time of the review in deciding whether to reinvestigate, including any new information provided by the applicant, not only information that appears directly in the case file. *See* HVFRA § 6 (implying that newly discovered evidence would be taken into account in case file review and reinvestigation decisions); H. Rep. No. 117–280, at 6 (''[N]on-law enforcement personnel finding new evidence in homicide cases serve as examples where a fresh perspective can help break a case open.''); 168 Cong. Rec. H3877 (daily ed. Mar. 28, 2022) (remarks of Rep. Swalwell) (explaining that the HVFRA ''requires a complete reexamination of the file and accompanying evidence'').

Section 95.5(b) of the proposed rule would specify what an investigative agency needs to do in conducting a full reinvestigation under the HVFRA. Section 95.5(b) first would define a full reinvestigation as one in which all new probative leads are exhausted. This definition is based on section 12(6)(C) of the Act, which defines a cold case murder in part as a murder ''for which all probative investigative leads have been exhausted''; section 2(a) of the Act, which directs the agency to review the case file to determine if a full reinvestigation would result in ''the identification of probative investigative leads or a likely perpetrator''; and section 4(a) of the Act, which directs the agency to conduct a full reinvestigation if the case file review concludes that it would result in ''probative investigative leads.'' These provisions manifest a purpose to address cases that have gone cold, in the sense that previously investigated leads that might have resulted in the identification of the perpetrator have not panned out; provide means for developing new potentially perpetrator-identifying leads through case file review; and follow up on those new leads to determine whether their promise for identifying the perpetrator can be realized.

Section 95.5(b) next would provide additional specifications regarding the conduct of full reinvestigations. Paragraph (b)(1) would require an investigative agency to analyze all evidence regarding the murder for the purpose of developing probative leads, following section 4(b) of the Act. The evidence available to the agency at the time of an HVFRA reinvestigation includes the content of the case file from the initial investigation and associated evidence retained from the initial investigation; any additional information that has been provided by the relative of the victim who applied for the case file review or that has come to the agency from other sources; and any additional leads or information that the agency may discover or develop in the course of the reinvestigation. The direction of § 95.5(b)(1) is to apply the whole body of evidence in furtherance of identifying the perpetrator.

Paragraph (b)(2) would provide that a full reinvestigation under the HVFRA does not require pursuit of leads that are insufficiently probative with respect to the potential identification of the perpetrator to warrant further investigation in the agency's judgment, or that would require the use of investigative methods inconsistent with the agency's policies or practices. This is a reiteration, for clarity and explicitness, of limitations appearing in the definition of ''probative leads'' in § 95.2(h).

The reinvestigation criteria of § 95.5(a) and (b) of the proposed rule do not require investigative agencies to modify or waive their normal standards for initiating and conducting investigations, if consistent with the Act's requirements. For example, consider the Attorney General's Guidelines for Domestic FBI Operations (''FBI Guidelines'' or ''Guidelines''), *http://www.justice.gov/archive/opa/docs/guidelines.pdf.* These Guidelines apply only to the FBI's investigative activities, but other investigative agencies may have similar policies or guidelines. As relevant to the HVFRA, the FBI Guidelines authorize three levels of investigative activity: assessments, preliminary investigations, and full investigations. *Id.* Part II, pp. 16–22.

An assessment may be opened to obtain information about a Federal crime. Assessments may be used to check out or resolve allegations or other information concerning Federal crimes through the relatively non-intrusive methods authorized in assessments, such as obtaining publicly available information, checking government records, using online services and resources, and interviewing witnesses. *Id.* at 17–20. An HVFRA reinvestigation could be opened as an assessment under the Guidelines in any case because the reinvestigation has the purpose of obtaining information about the murder in question, specifically, the identity of the perpetrator.

The Guidelines authorize the FBI to initiate a preliminary investigation if there is information or an allegation indicating that (i) a Federal crime may have occurred and (ii) investigation may obtain information relating to the crime or the involvement or role of an individual in the crime. Preliminary investigations may involve all lawful investigative methods, with the exception of electronic surveillance and intrusive searches. *Id.* Part II.B, pp. 20–22.

In the context of the HVFRA, the FBI's initial investigation of the murder for which reinvestigation is sought implies that the FBI already has information indicating the possible commission of a Federal crime—*i.e.,* the murder in question—which satisfies the first precondition for opening a preliminary investigation. The second precondition under the Guidelines for opening a preliminary investigation is also satisfied, because the HVFRA's basis for requiring a reinvestigation is probative leads resulting from the case file review. This ensures that there is now a new lead such that further investigation may obtain information relating to the murder or the involvement or role of an individual (*i.e.,* the heretofore unknown perpetrator) in the murder.

Accordingly, reinvestigations under the HVFRA may be opened as preliminary investigations under the Guidelines. The methods excluded in preliminary investigations—electronic surveillance and intrusive searches—would then not be available. But if these methods were needed to pursue the

probative leads underlying the reinvestigation and legally permitted, they could be secured by opening or reopening the HVFRA reinvestigation as a full investigation under the Guidelines.

The Guidelines allow the FBI to initiate a full investigation if there is an articulable factual basis for the investigation that reasonably indicates that (i) a Federal crime may have occurred and (ii) the investigation may obtain information relating to the crime or the involvement or role of an individual in the crime. Full investigations may involve all lawful investigative methods. *Id.*

The preconditions for opening a full investigation under the Guidelines are likely to be satisfied in any case involving reinvestigation under the HVFRA. This is so because it is unlikely that the FBI would have previously investigated a murder, and now judges, following a case file review, that new leads are sufficiently likely to enable the identification of the perpetrator to warrant further investigation, in the absence of articulable facts that reasonably indicate that (i) the murder may have occurred and (ii) the reinvestigation may obtain information relating to the murder or the involvement or role of an individual (*i.e.,* the heretofore unknown perpetrator) in the murder.

The preconditions for opening a full investigation under the Guidelines will always be satisfied in HVFRA reinvestigation cases in which opening a full investigation under the Guidelines is needed to pursue the investigative methods excluded in preliminary investigations—electronic surveillance and intrusive searches—and use of those methods is legally permitted. This is so because the legal predication requirements for authorizing those methods, including probable cause, exceed the ''articulable factual basis'' required for opening a full investigation under the Guidelines. On the other hand, if the legal predication required for use of electronic surveillance or intrusive searches is not satisfied, use of those methods would not be required in an HVFRA reinvestigation, because only investigative methods consistent with agency policy need be used, *see* § 95.5(b)(2), and only lawful methods are consistent with the Guidelines.

It follows that when the conditions for required reinvestigation under the HVFRA and the rule are satisfied, the conditions for initiating an investigation under the Guidelines for the FBI's investigative activities will also be satisfied. There is accordingly no conflict or inconsistency between investigation or reinvestigation in conformity with the Guidelines' standards and investigation or reinvestigation in conformity with the HVFRA's requirements. The same point would apply to other investigative agencies with investigative policies resembling the FBI's in relevant respects.

Section 95.5(c) of the proposed rule would implement section 4(c) of the Act, which provides that a reinvestigation shall not be conducted by a person who previously investigated the murder. The proposed rule would add that this does not limit consulting with or obtaining information from a previously involved person, or using such a person in a subordinate role in the reinvestigation. Engaging people with previous knowledge of the case in a reinvestigation has similar value to engaging such persons in case file reviews, as discussed above, and does not conflict with the objectives of the Act.

Section 95.5(c) does not bar a person who carried out a case file review under the Act from conducting or being involved in an ensuing reinvestigation. It only precludes reinvestigation by a person who previously investigated the murder. The heading of section 4(c) of the Act, ''Reviewer,'' does not signify the contrary. It replicates the heading of the corresponding provision regarding case file reviews, section 2(d), and reflects in both contexts a policy of ensuring that ''fresh eyes'' will be cast on the case, H. Rep. No. 117–280, at 6; 168 Cong. Rec. H3876, 3879 (remarks of Rep. Jackson Lee), by prohibiting people who previously investigated the case from conducting case file review and any resulting reinvestigation. This policy does not imply that the role of the case file reviewer in subsequent reinvestigation should be restricted. The legislative history of the HVFRA further confirms that the case file reviewer may conduct a resulting reinvestigation under the HVFRA. H. Rep. No.117–280, at 10 (''The person(s) conducting the full reinvestigation must not have previously investigated the cold case murder at issue, *except for the case file review described in section 2.*'') (emphasis added).

Section 95.5(d) would provide that there can be only one full reinvestigation at any time with respect to the same cold case murder victim, tracking section 4(d) of the Act. As with case file reviews, the proposed rule would add that if reinvestigation is found to be warranted with respect to multiple victims, the resulting reinvestigations may be consolidated.

F. Section 95.6—Multiple Agencies

Section 95.6, which would track section 10 of the Act, would require that case file reviews and reinvestigations be carried out in a cohesive way when more than one agency is involved, so that there is only one joint case file review or reinvestigation happening with respect to a cold case murder at any time.

G. Section 95.7—Consultation, Updates, and Explanation

Section 95.7 would implement section 5 of the Act, regarding agency consultations, updates, and explanation of reinvestigation decisions.

Section 95.7(a) and (b) would require investigative agencies to consult with applicants and provide them with periodic updates. With respect to consultation, the proposed rule would explain that this requires discussing the application with the applicant on at least one occasion.

Section 95.7(c) would require investigative agencies to meet with the applicant and discuss the evidence to explain the decision whether or not to reinvestigate at the conclusion of a case file review. There are constraints on discussing the evidence in pending investigations with private persons, as the Act recognizes in section 9, which provides that information may be withheld if it would endanger the safety of any person, unreasonably impede an ongoing investigation, violate a court order, or violate legal obligations regarding privacy. Additional concerns about disclosing investigative information include potentially damaging the reputation of persons who come under suspicion, but may eventually be cleared, and exposing them to harassment and other adverse social consequences. Accordingly, § 95.7(c) would make clear that the discussion of the evidence with an applicant may be at an appropriate level of generality that does not involve disclosing the information described in section 9 of the Act and that is consistent with the general policies and practices affecting the sharing of information with murder victims' family members. *See, e.g.,* The Attorney General Guidelines for Victim and Witness Assistance, Arts. II.B, IV.I (2022 ed.).

Section 95.7(d) would provide that meetings required under § 95.7 may be carried out in person, or through remote video communication, the latter option often being more convenient for both the agency and victims' family members. It further states that consultations and updates may be

carried out in person, or through other means of communication, such as over the phone or by email.

H. Section 95.8—Subsequent Reviews

Section 95.8 of the proposed rule would implement section 6 of the Act, which provides that case file reviews and reinvestigations generally do not have to be undertaken more frequently than at five-year intervals.

Paragraph (a) of § 95.8 would incorporate the basic rule that case file reviews and reinvestigations need not be undertaken more frequently than at five-year intervals, subject to a proviso for situations in which ''there is newly discovered, materially significant evidence.''

Paragraph (b) of § 95.8 would explain the proviso for situations involving new, material evidence. The proposed rule would interpret this proviso in a manner consistent with the definition of ''probative leads'' in § 95.2(h). Specifically, case file reviews and reinvestigations may need to be undertaken at intervals of less than five years only if there is evidence discovered subsequent to the previous case file review or reinvestigation that identifies the perpetrator, or that provides a sufficient likelihood of enabling the identification of the perpetrator to warrant further investigation, in the agency's judgment and consistent with its policies and practices regarding the use of investigative methods.

Paragraph (c) of § 95.8 would resolve an inconsistency in the language of section 6 of the Act. Section 6(a) says that if a case is not reinvestigated, ''no additional case file review shall be required to be undertaken . . . for a period of five years.'' Section 6(b) says that if a full reinvestigation is completed without identifying the perpetrator, ''no additional case file review or full reinvestigation shall be undertaken . . . for a period of five years.'' In other words, where subsection (a) says that an agency is not required to engage in further review of the case for five years, subsection (b) seems to say that the agency cannot engage in further review of the case for five years.

Considering the Act's purpose of promoting the solution of cold case murders, the prohibitory language of subsection (b) appears to reflect a drafting error that resulted from adding the ''required to be'' language appearing in subsection (a) but neglecting to add the same language in subsection (b). *Cf.* H.R. 3359, 117th Cong., 1st Sess., § 7 (proposed HVFRA as originally introduced). No reason appears why Congress, in enacting the HVFRA, would have sought to prohibit agencies from exercising their broad discretion to reopen cold case murder investigations if a case was reinvestigated unsuccessfully under the HVFRA. ''Congress could not plausibly have intended'' this ''illogical'' outcome, *Stovic* v. *Railroad Retirement Board,* 826 F.3d 500, 505 (D.C. Cir. 2016), which would deprive agencies of their pre-existing discretion to reopen the investigation of cold case murders at any time, as warranted in their judgment, and would impose a restriction on agency discretion to reopen murder investigations that does not apply to reopening investigations of any other type of crime. The rule would resolve the inconsistency by providing in § 95.8 that ''[a]n agency may, in its discretion, review case files, continue investigation, or reinvestigate notwithstanding the absence of an application by a designated person or the time when previous review, investigation, or reinvestigation occurred.''

I. Section 95.9—Procedures To Promote Compliance

Section 95.9(a) would implement section 8 of the Act by requiring each agency to promulgate regulations to enforce the rights of designated persons under the Act and ensure compliance, including designation of an administrative authority to receive and investigate complaints, training of appropriate personnel regarding the Act, disciplinary sanctions for ''willful or wanton'' noncompliance, and a procedure for resolving complaints.

Section 95.9(a)(1) would provide that the requirement to issue such regulations applies to agencies that may be the principal investigative agencies in murder investigations, because the proposed rule assigns responsibility for carrying out the Act to those agencies. The proposed rule would further specify that agencies need not separately promulgate regulations to the extent they adopt, or are subject to, regulations issued by another organizational unit of the Government regarding these matters. For example, a Department that includes a number of agencies that investigate murders may have Department-wide rules and processes regarding training and disciplinary sanctions for violations of the Act.

Section 95.9(a)(2) would specify the content of the regulations that agencies must promulgate.

Section 95.9(a)(3) would provide that the ''agency'' for these purposes may be a broader organizational unit of the Government in which the principal investigative agency is situated. Many provisions of the Act direct the responsible ''agency'' (or head of the agency) to take certain actions. *See* HVFRA 2(a) (review of case file), 2(c) (certification in lieu of review), 2(e) (confirmation of receipt of application and notice of rights), 2(g) through (h) (time limits for agency to conclude review), 4(a) (conduct of full reinvestigation), 5 (agency to consult, update, and meet with the applicant), 8 (complaint and disciplinary functions to ensure compliance with the Act), 10 (multiple agencies to coordinate), 13 (submission of reports to congressional committees). Depending on the nature of the required action and the operational conditions and practices of the affected governmental entities, it may make sense for the required actions to be carried out by the particular governmental component that investigated a case, or alternatively, at the departmental level or another broader level. Either approach is legitimate and consistent with the Act's definition of ''agency'' as ''a Federal law enforcement entity with jurisdiction to engage in the detection, investigation, or prosecution of a cold case murder,'' HVFRA 12(5), since both the individual component and the broader organizational unit of Government in which it is situated are governmental entities with law enforcement functions. Section 95.9(a)(3) confirms this point with respect to the training, complaint, and disciplinary functions described in HVFRA 8. For example, with respect to the requirement of section 8(b)(1) of the Act that the regulations designate an administrative authority ''within the agency to receive and investigate complaints,'' a Department may decide to assign this function to its Inspector General for all of its components, taking ''the agency'' in this context to refer to the Department as a whole. But it is also consistent with the Act if a Department decides to assign these functions to its individual investigative components, as § 95.9(b) provides for the Department of Justice.

Section 95.9(b) would implement the requirements of section 8 of the Act with respect to the agencies of the Department of Justice specifically, including the FBI, which is broadly responsible for investigating murders within the scope of the Act. For the Justice Department agencies, the training, complaint, and disciplinary matters required by section 8 of the Act are most appropriately carried out by the individual investigative agencies within the Department.

Section 95.9(b)(1) would require each such agency to provide training for officers and employees involved in

carrying out the Act, following the requirement of section 8(b)(2) of the Act.

Section 95.9(b)(2) would require each agency to designate an official to receive and investigate complaints of HVFRA violations, following the requirement of section 8(b)(1) of the Act. In some instances the designated official may have a conflict of interest in investigating a complaint, such as when the complaint relates to actions the designated official was involved in. In such cases, the proposed rule would direct the official to notify the entity within the agency responsible for addressing or resolving such conflicts, and investigation of the complaint may be assigned to a different official.

Section 95.9(b)(3) and (4) would carry out the requirement of section 8(b)(4) of the Act to provide a procedure for the resolution of complaints under the Act.

Section 95.9(b)(3) would provide initially that a complaint may be submitted in writing by the person who requested the case file review under section 95.3(a). Since the persons who have requested a case file review under the Act are the individuals who have rights under the Act, they are the appropriate persons to complain if the Act's requirements have not been complied with. This would comport with the Act's direction in section 8(a) that the agency must ''promulgate regulations to enforce the right of a designated person to request a review under this Act,'' and the Act's direction in section 8(b)(4) that the agency must provide a procedure for the resolution of complaints filed by ''the designated person,'' *i.e.,* the person who requested a case file review.

Section 95.9(b)(3) further would provide timing rules for the submission of complaints. These timing rules are designed both to provide applicants adequate time to bring alleged violations of the Act to the agency's attention, and to promote the prompt investigation of potential violations and fairness to agency personnel who may be the subject of complaints. The general time limit to submit a complaint is one year after the complainant becomes aware of a violation. However, a complaint would be timely within one year of the complainant's being informed of the completion of a case file review or reinvestigation, regardless of when the complainant became aware of the violation. The time would be extended to five years after the application for case file review was submitted if the agency did not inform the applicant about completion of a case file review or reinvestigation, either because a review or reinvestigation is ongoing or because the agency failed to inform the applicant of the completion of a case file review or reinvestigation as required by § 95.7(b) and (c). Section 95.9(b)(3) also would state that a complaint submitted outside the specified time frames must include an explanation for why it was not timely submitted. If satisfied by the explanation, the agency could entertain an untimely complaint, but only as a matter of discretion.

The remainder of § 95.9(b)(3) would specify information to be included in a complaint, to the extent the complainant is able, which is needed to enable the agency official to investigate the complaint. This includes providing identifying information for the complainant, the case, and any agency officer or employee whose conduct is the subject of the complaint, together with information about the nature of the alleged violation, when and how it occurred, and any prior dealings with agency personnel about it.

Section 95.9(b)(4) would direct the agency official to investigate a complaint that satisfies the proposed rule's conditions, document and close the investigation in conformity with agency procedures, and inform the complainant about the disposition of the complaint. It further directs the agency official to determine whether further action is warranted. For example, if it is determined that measures required by the Act were not taken, such as the consultation, updating, and explanation requirements of section 5 of the Act, supplying the omitted measures may now be warranted, and retraining or referral for disciplinary action may be warranted for officers and employees who violated the Act, depending on their culpability and the nature of the violation.

Section 95.9(b)(4) would provide, however, that the complaint procedure is not available to entertain complaints about the initial investigation of the murder, or to revisit the agency's decision whether reinvestigation is warranted under the Act. This reflects the complaint procedure's function of promoting compliance with the Act and addressing violations of the Act. Its purposes do not include reviewing the conduct of the initial investigation or providing a second opinion whether the results of a case file review under the Act warrant reinvestigation.

Section 8 of the HVFRA, which is titled ''Procedures to Promote Compliance,'' requires agencies to promulgate regulations that provide a procedure for resolving complaints ''concerning the agency's handling of a cold case murder investigation or the case file evaluation,'' in order ''to enforce the right of a designated person to request a review under this Act and to ensure compliance by the agency with the obligations described in this Act.'' This statutory language is naturally understood to require a complaint procedure to address violations of the HVFRA—not to second-guess the agency's handling of the initial investigation, which is not subject to the HVFRA, or to secure a re-examination or redetermination of whether the results of an HVFRA case file review warrant reinvestigation. On the latter point, nothing in the HVFRA suggests that the personnel responsible for the complaint and disciplinary process must be empowered to redetermine the matter and potentially override the judgment of the responsible agents who carried out the case file review and decided whether to conduct a reinvestigation. Rather, the HVFRA entitles a qualifying applicant to one case file review, and provides that the agency is not required to do another for five years, absent newly discovered and materially significant evidence. HVFRA 6. Section 95.9(b)(4) would make these points clear.

Section 95.9(b)(4) would also specify that the agency's complaint procedure is not available to entertain complaints about personnel of other agencies, whose conduct is properly the responsibility of their employing agencies.

Section 95.9(b)(5) would make the agency head or a designee the final arbiter of the complaint, and preclude judicial review, following section 8(b)(5) of the Act.

Section 95.9(b)(6) would provide that officers or employees of the agency who have failed to comply with the Act may be required to undergo retraining or additional training, and it would carry out the requirement of section 8(b)(3) of the Act for disciplinary sanctions, including potentially suspension or termination of employment, for willful or wanton violations.

Section 95.9(b)(7) would provide that the complaint process provisions do not authorize the agency to exercise authority over, take disciplinary action against, or involve officers or employees of other agencies. This reflects the normal division of authority and responsibility among Federal agencies. For example, an Assistant U.S. Attorney (''AUSA'') may have some involvement in an HVFRA case file review or reinvestigation, such as being consulted on a legal question, being asked to secure a warrant or subpoena, or being presented with the results of a reinvestigation for a decision whether to prosecute. As in other investigative contexts, that would not bring the

AUSA within the scope of the investigative agency's complaint processes or subject the AUSA to any authority of the investigative agency.

J. Section 95.10—Data Collection

Section 95.10 would implement section 7 of the Act, which requires the National Institute of Justice to publish annual statistics regarding cold case murders. The proposed rule would provide that the Attorney General may delegate this function to the Bureau of Justice Statistics or another Justice Department component, which may be more appropriate agencies to carry out this function. Delegating statutory functions to other components is within the Attorney General's authority under 28 U.S.C. 509, 510. The proposed rule would also specify the relevant time frames and classes of cold case murders to be covered in each annual publication of statistics.

K. Section 95.11—Annual Report

Section 95.11 would implement section 13 of the Act, which requires each agency to submit annual reports to the House and Senate Judiciary Committees describing actions taken and results achieved under the Act. The proposed rule would specify that the reporting requirement applies to agencies that may be the principal investigative agencies in the investigation of murders, because the rule assigns responsibility for carrying out the Act to those agencies, and other agencies would have nothing to report. The proposed rule further would provide that an agency need not submit a separate report if the required information with respect to the agency is included in a report submitted by another organizational unit of the Government. For example, a Department may wish to submit consolidated annual reports providing the required information for all of its investigative agencies. The latter approach may be more consistent with the Department's general procedures in dealing with Congress and more useful to the Committees than separate reports from individual agencies.

L. Section 95.12—Withholding Information

Section 95.12, tracking section 9 of the Act, would make it clear that the Act does not require an agency to disclose information that would endanger the safety of any person, unreasonably impede an ongoing investigation, violate a court order, or violate legal obligations regarding privacy.

V. Regulatory Requirements

A. Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities for the purposes of that Act because the regulation only concerns the review and reinvestigation of cold case murders by Federal investigative agencies.

B. Executive Orders 12866, 13563, and 14094—Regulatory Review

The Office of Management and Budget has determined that this rulemaking is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, 58 FR 51735, 51738 (Oct. 4, 1993), but it is not a section 3(f)(1) significant action. Accordingly, this proposed rule has been submitted to the Office of Management and Budget (''OMB'') for review. This proposed rule has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866, Executive Order 13563, 76 FR 3821 (Jan. 21, 2011), and Executive Order 14094, 88 FR 21879 (Apr. 11, 2023).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). 58 FR 51735–36; 76 FR 3821. Executive Order 13563 emphasizes the importance of using the best available methods to quantify costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. 76 FR 3822.

The costs and benefits of this rulemaking, which implements the HVFRA's requirements, are attributable to the HVFRA itself. The costs include the work required in processing applications, carrying out case file reviews, and reinvestigating cold case murders as warranted, in conformity with the HVFRA. The benefits include solving cold case murders where the HVFRA process is successful and providing closure for the victims' families. No alternative regulatory approach would significantly reduce these costs while achieving the benefits constituting the legislative objective with similar effectiveness.

C. Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, as outlined by Executive Order 13132, 64 FR 43255 (Aug. 10, 1999). The regulation only concerns the review and reinvestigation of cold case murders by Federal investigative agencies.

D. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of Justice and the Department of the Interior, in accordance with section 5(b) of Executive Order 13175, 65 FR 67249 (Nov. 9, 2000), will consult with Tribal officials regarding this proposed regulation.

E. Executive Order 12988—Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, 61 FR 4729, 4731 (Feb. 7, 1996), to specify provisions in clear language. Pursuant to section 3(b)(1)(I) of the Executive Order, nothing in this proposed rule is intended to create any legal or procedural rights enforceable against the United States.

F. Unfunded Mandates Reform Act of 1995

This rule when finalized will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. The rule only concerns the review and reinvestigation of cold case murders by Federal investigative agencies.

G. Congressional Review Act

This rule is not a ''major rule'' as defined by the Congressional Review Act, 5 U.S.C. 804(2).

List of Subjects in 28 CFR Part 95

Crime, Law enforcement.

Authority and Issuance

Accordingly, for the reasons stated in the preamble, the Department of Justice proposes to add 28 CFR part 95 to read as follows:

PART 95—HOMICIDE VICTIMS' FAMILIES' RIGHTS

Sec.

95.1 Purpose.
95.2 Definitions.
95.3 Case file review.
95.4 Review procedures.
95.5 Full reinvestigation.
95.6 Multiple agencies.
95.7 Consultation, updates, and explanation.
95.8 Subsequent reviews.
95.9 Procedures to promote compliance.
95.10 Data collection.
95.11 Annual report.
95.12 Withholding information.

Authority: Pub. L. 117–164, 136 Stat. 1358.

§ 95.1 Purpose.

The purpose of this part is to implement the Homicide Victims' Families' Rights Act of 2021 (the ''Act''). The Act provides for a system to review the case files of cold case murders at the instance of certain persons and potentially carry out further investigation.

§ 95.2 Definitions.

In this part:

(a) The term ''designated person'' means a parent, step-parent, parent-in-law, grandparent, grandparent-in-law, sibling, spouse, child, or step-child of a murder victim.

(b) The term ''victim'' means a natural person who died as a result of a cold case murder.

(c)(1) The term ''murder'' means an offense under 18 U.S.C. 1111, or another Federal offense that incorporates by reference the elements of 18 U.S.C. 1111. The offenses that incorporate by reference the elements of 18 U.S.C. 1111 are—

(i) A murder committed in Indian country, investigated as a crime potentially prosecutable under 18 U.S.C. 1152 or 1153;

(ii) A murder in which the victim was a Federal officer or employee, or another person whose status or activities would make the person's murder a Federal crime, investigated as a crime potentially prosecutable under 18 U.S.C. 115, 351, 1114, 1116, 1121, 1503, 1512, 1513, 1751, or 1841; 7 U.S.C. 2146; 15 U.S.C. 1825; or 21 U.S.C. 461, 675, or 1041;

(iii) A murder in which the victim was a United States national killed outside of the United States, investigated as a crime potentially prosecutable under 18 U.S.C. 1119 or 2332; and

(iv) A murder in which the status or activities of the perpetrator, or the means or circumstances of the murder's commission, would make the murder a Federal crime, investigated as a crime potentially prosecutable under 18 U.S.C. 36, 924(j), 930, 1118, 1120, 1652, 1958, 1959, 2245, 3261, or 3273; or 49 U.S.C. 46506.

(2) The term ''murder'' does not include—

(i) A murder in which the victim died before January 1, 1970;

(ii) A murder that is not an offense under the laws of the United States, even if it is an offense under the laws of a State, the District of Columbia, or a territory or possession of the United States; or

(iii) Any offense, conduct, or occurrence that did not involve the commission of a murder as defined in paragraph (c)(1) of this section.

(d) The term ''agency'' means a Federal law enforcement entity with jurisdiction to engage in the detection, investigation, or prosecution of a cold case murder. The term ''agency'' does not include a State or local law enforcement entity or a law enforcement entity of the District of Columbia or a territory or possession of the United States.

(e) The term ''principal investigative agency'' means the Federal investigative agency that had the primary responsibility for the initial investigation of a murder. In a case in which a murder was investigated by State or other non-Federal authorities and the role of Federal agencies was the provision of investigative assistance, and in a case in which a murder was investigated by a Federal agency but thereafter State or other non-Federal authorities assumed the primary responsibility for the investigation, no Federal agency was the principal investigative agency and the case is not within the scope of this part. A prosecutorial agency of the Department of Justice, though involved in the investigation of a murder, is not the principal investigative agency in any case.

(f) The term ''initial investigation'' means the investigation of a murder before it became a cold case murder.

(g) The term ''cold case murder'' means a murder—

(1) In which the victim died more than three years prior to the date of an application by a designated person under § 95.3;

(2) Previously investigated by a Federal law enforcement entity;

(3) For which all probative leads have been exhausted; and

(4) For which no likely perpetrator has been identified.

(h) The term ''probative leads'' means information that identifies the perpetrator or that provides a sufficient likelihood of enabling the identification of the perpetrator to warrant further investigation, in the agency's judgment and consistent with the agency's policies and practices regarding the use of investigative methods. Variant terminology used in some provisions of the Act, ''probative investigative leads,'' has the same meaning.

§ 95.3 Case file review.

(a) *In general.* Upon written application by one designated person, the principal investigative agency shall review the case file regarding a cold case murder to determine if a full reinvestigation would result in probative leads.

(b) *Review.* A review under paragraph (a) of this section shall include the following elements:

(1) An analysis of what investigative steps or follow-up steps may have been missed in the initial investigation. This element requires the reviewer to consider whether, in the reviewer's judgment, there were steps or follow-up steps that should have been taken in the original investigation but were not taken.

(2) An assessment of whether witnesses should be interviewed or reinterviewed. This element requires the reviewer to consider whether, in the reviewer's judgment, there were witnesses in the original investigation who should have been interviewed but were not interviewed, or who should have been asked additional questions or interviewed in a different manner than in the original investigation.

(3) An examination of physical evidence to see if all appropriate forensic testing and analysis was performed in the first instance or if additional testing might produce information relevant to the investigation. This element has two aspects. It requires the reviewer to consider whether, in the reviewer's judgment, there was forensic testing available at the time, such as checking for latent fingerprints, which should have been carried out in the initial investigation but was not carried out. It also requires the reviewer to consider whether there have been advances in forensic technology or methods, such as more sensitive DNA testing, which were unavailable at the time of the initial investigation, but which would now be utilized in a like investigation under current policies and practices regarding the use of investigative methods.

(4) An update of the case file using the most current investigative standards as of the date of the review to the extent it would help develop probative leads. This element requires the reviewer to consider whether additional or potentially more effective investigative measures would have been taken in the

initial investigation had current investigative standards been in effect. For example, two Executive Orders, E.O. 14053 and E.O. 13898, have been issued, in 2021 and 2019 respectively, to enhance and prioritize the investigation of cases involving missing or murdered indigenous persons. This element requires the reviewer to consider in such cases whether application of the current investigative standards would help develop probative leads.

(5) If the reviewer is aware of another agency that investigated or participated in the investigation of the murder, notification of the other agency that the case is under review and consideration of any information provided by the other agency.

(c) *Reviewer.* A review under paragraph (a) of this section shall not be conducted by a person who previously investigated the murder at issue. This does not limit the reviewer in seeking information from or consulting with a person who conducted or was involved in the initial investigation.

(d) *Acknowledgment.* The agency shall provide in writing to the applicant, as soon as reasonably possible, confirmation of the agency's receipt of the application and notice of the applicant's rights under the Act.

(e) *Certification in lieu of review.* The application for a case file review may be denied if the case does not satisfy the criteria for a cold case murder as defined in § 95.2(g). If a case file review is denied on this ground, the agency shall issue a written certification that the case does not satisfy the criteria for a cold case murder and shall inform the applicant of the reason for the denial.

§ 95.4 Review procedures.

(a) *Application form.* Each agency that may be the principal investigative agency in a cold case murder investigation shall develop a written application form to be used for designated persons to request a case file review. An agency may adopt for this purpose a standard form developed by the government, or by another organizational unit of the government, and need not separately develop an agency-specific form.

(b) *Responsible agency.* An application for a case file review may be denied if it is submitted to an agency that did not previously investigate the murder or was not the principal investigative agency in the initial investigation of the murder. If a case file review is denied on this ground, the agency shall inform the applicant of the reason for the denial. If the agency is aware of another Federal agency that was the principal investigative agency in the initial investigation, the agency shall so advise the applicant and shall, if the applicant wishes, transfer the application to the principal investigative agency. If no Federal agency was the principal investigative agency in the initial investigation, but the agency knows the identity of a non-Federal entity that investigated the murder, the agency shall so advise the applicant.

(c) *Multiple agencies or applications.* (1) If more than one agency participated in the investigation of a murder, the agencies shall coordinate any case file review or full reinvestigation so that there is only one joint case file review or full reinvestigation at any one time. An application for review shall not be denied based on disagreement among agencies as to which agency was the principal investigative agency in the initial investigation. In such a case, the relevant agencies shall jointly consider the application and collaborate in carrying out any resulting case file review or reinvestigation, or responsibility for those functions may be assumed by or assigned to one of the agencies involved.

(2) An agency need not take any action based on an application by a designated person during the pendency of an application by another designated person with respect to the same victim, or during the pendency of a resulting case file review or reinvestigation, but the agency shall advise the applicant that there was an earlier application and may consider any information provided by the later applicant.

(3) Only one case file review shall be undertaken at any one time with respect to the same cold case murder victim. If an agency receives multiple applications with respect to different victims, it may consolidate any resulting case file reviews.

(d) *Time limit.* An agency shall complete a case file review and decide whether a full reinvestigation is warranted not later than six months after the receipt by the agency of the application resulting in the review. The agency may extend this time limit once for a period not exceeding six months if the agency finds that the number of case files to be reviewed makes it impracticable to comply with the time limit without unreasonably taking resources from other law enforcement activities. If the time limit is extended, the agency shall notify and explain its reasoning to the applicant.

§ 95.5 Full reinvestigation.

(a) *In general.* An agency shall conduct a full reinvestigation of a cold case murder if review of the case file concludes that a full reinvestigation would result in probative leads. As provided in the definition of ''probative leads'' in § 95.2(h), this means that a full reinvestigation is required if the case file review produces information that identifies the perpetrator or that provides a sufficient likelihood of enabling the identification of the perpetrator to warrant further investigation, in the agency's judgment and consistent with the agency's policies and practices regarding the use of investigative methods.

(b) *Full reinvestigation.* A full reinvestigation for purposes of the Act means an investigation in which all new probative leads are exhausted. A full reinvestigation—

(1) Shall include analyzing all evidence regarding the murder for the purpose of developing probative leads; but

(2) Need not involve pursuing leads that do not, in the agency's judgment, provide a sufficient likelihood of enabling the identification of the perpetrator to warrant further investigation, or whose pursuit is not consistent with the agency's policies and practices regarding the use of investigative methods.

(c) *Person conducting reinvestigation.* A reinvestigation shall not be conducted by a person who previously investigated the murder. This prohibition does not limit consulting with or obtaining information from a person involved in the previous investigation, or using such a person in a subordinate role in the reinvestigation.

(d) *Unified reinvestigation.* Only one full reinvestigation shall be undertaken at any one time with respect to the same cold case murder victim. If reinvestigation is found to be warranted with respect to multiple victims, the resulting reinvestigations may be consolidated.

§ 95.6 Multiple agencies.

If more than one agency conducted the initial investigation of a cold case murder, each agency shall coordinate with the other agency or agencies any case file review or full reinvestigation so that there is only one case file review or full reinvestigation occurring at a time, as provided in §§ 95.4(c) and 95.5(d).

§ 95.7 Consultation, updates, and explanation.

(a) *Consultation.* The agency shall consult with the designated person who filed an application for case file review. This means discussing the application with the applicant on at least one occasion.

(b) *Updates.* The agency shall provide the applicant with periodic updates during any case file review or full reinvestigation. The required update shall include informing the applicant whether the review or reinvestigation is in progress or has been completed.

(c) *Explanation of decision.* At the conclusion of a case file review, the agency shall meet with the applicant and discuss the evidence to explain the decision whether or not to engage in a full reinvestigation. Discussion of the evidence and explanation of the decision do not require disclosure of information described in § 95.12 or other information that would not generally be shared with a victim's family members in the investigation of a murder.

(d) *Means of communication.* Meetings required under this section may be carried out in person or through remote video communication. Consultations and updates may be carried out in person or through any other means of communication.

§ 95.8 Subsequent reviews.

(a) *In general.* If an agency concludes following a case file review that a full reinvestigation is not warranted, or if a full reinvestigation is undertaken and completed without identifying a likely perpetrator, no additional case file review or reinvestigation is required to be undertaken with respect to a cold case murder for a period of five years, unless there is newly discovered, materially significant evidence.

(b) *New material evidence.* For purposes of the Act, newly discovered, materially significant evidence means evidence discovered subsequent to the previous case file review or reinvestigation that identifies the perpetrator or that provides a sufficient likelihood of enabling the identification of the perpetrator to warrant further investigation, in the agency's judgment and consistent with the agency's policies and practices regarding the use of investigative methods.

(c) *Discretionary authority.* An agency may, in its discretion, review case files, continue investigation, or reinvestigate notwithstanding the absence of an application by a designated person or the time when previous review, investigation, or reinvestigation occurred.

§ 95.9 Procedures to promote compliance.

(a) *In general*—(1) *Regulations.* The Act provides that, not later than August 3, 2023, each agency shall promulgate regulations to enforce the right of a designated person to request a review under the Act and to ensure compliance by the agency with the obligations described in the Act. This requirement applies to any agency that may be the principal investigative agency in a murder investigation. An agency is not required to separately promulgate regulations to the extent it adopts, or is subject to, regulations issued by another organizational unit of the government regarding the matters described in this section.

(2) *Content of regulations.* The Act provides that the regulations promulgated under paragraph (a)(1) of this section shall—

(i) Designate an administrative authority within the agency to receive and investigate complaints relating to case file reviews and reinvestigations and provide a procedure for the resolution of such complaints;

(ii) Require a course of training for appropriate employees and officers within the agency regarding the procedures, responsibilities, and obligations under the Act;

(iii) Contain disciplinary sanctions, which may include suspension or termination from employment, for employees of the agency who have willfully or wantonly failed to comply with the Act; and

(iv) Provide that the head of the agency, or a designee, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the head of the agency or designee by a complainant.

(3) *Agency.* For purposes of paragraphs (a)(1) and (2) of this section, the ''agency'' may be a broader organizational unit of the government in which the principal investigative agency is situated.

(b) *Department of Justice.* The following shall apply to each agency of the Department of Justice that may be the principal investigative agency in a cold case murder investigation:

(1) The agency shall require a course of training regarding the procedures, responsibilities, and obligations required under the Act for agency officers and employees whose involvement in carrying out the Act warrants such training.

(2) The agency shall designate an official within the agency to receive and investigate complaints alleging that the agency engaged in a violation of the Act relating to case file review or reinvestigation of a cold case murder. If investigation of a complaint by the official could create a conflict of interest, the official shall notify the appropriate individual or office within the agency and investigation of the complaint may be assigned to a different official.

(3) A complaint under this subsection must be submitted in writing by a person who applied for case file review under § 95.3(a). The complaint must be submitted within one year of the complainant's knowledge of a violation or receipt of information from the agency indicating completion of a case file review or reinvestigation, but if no such information has been received from the agency, then within five years of the submission of the application for case file review. A complaint submitted outside these time frames must include an explanation for why it was not timely submitted, which will be considered in deciding whether to accept the application. The complaint shall contain, to the extent known to, or reasonably available to, that person, the following information:

(i) The name and contact information of the complainant.

(ii) The investigative case number or name of the murder victim.

(iii) Any tracking number or other identifier of the complainant's application for case file review under § 95.3(a).

(iv) If the complaint pertains to a specific officer or employee of the agency, that person's name and contact information, or other identifying information if the complainant is not able to provide name and contact information.

(v) Information about the alleged violation of the Act sufficient to enable the agency official to conduct an investigation including: the nature of the violation; when and how it occurred; whether, when, and how the complainant notified an agency officer or employee of the alleged violation; and any actions taken by an agency officer or employee in response to such notification.

(4) The agency official shall investigate a complaint that satisfies the conditions set forth in paragraph (b)(3) of this section, determine whether further action is warranted, document and close the investigation of the complaint in conformity with agency procedures, and inform the complainant about the disposition of the complaint. However, the complaint procedure under this subsection is not available to present complaints about the conduct of the initial investigation, to present complaints about the conduct of an officer or employee of another agency, or to secure a reexamination or redetermination of the agency's decision whether a reinvestigation is warranted under the Act.

(5) The head of the agency or a designee shall be the final arbiter of the

complaint and there shall be no judicial review of that person's final decision.

(6) An officer or employee of the agency who has failed to comply with the Act may be required to undergo retraining or additional training. All disciplinary actions authorized by the agency or the Department of Justice may be taken, as appropriate, including suspension or termination from employment, for officers or employees of the agency who are determined to have willfully or wantonly failed to comply with the Act.

(7) The provisions of paragraph (b) of this section do not authorize the agency to exercise authority over, take disciplinary action against, or involve in its complaint or disciplinary processes, an officer or employee of another agency.

§ 95.10 Data collection.

(a) *Publication of statistics.* Not later than August 3, 2025, and annually thereafter, the National Institute of Justice shall publish statistics on the number of cold case murders. The Attorney General may delegate this function to the Bureau of Justice Statistics or another component of the Department of Justice.

(b) *Content of published statistics.* The statistics published pursuant to paragraph (a) of this section shall, at a minimum, be disaggregated by the circumstances of the cold case murder, including the classification of the offense, and by agency.

(c) *Annual publications.* The statistics published in each year shall provide the required information for—

(i) Cold case murders in which the murder occurred after the enactment of the Act and no likely perpetrator was identified by the end of the preceding year; and

(ii) Cold case murders in which an application for review under § 95.3(a) was filed before the end of the preceding year and no likely perpetrator was identified by the end of that year.

§ 95.11 Annual report.

(a) *In general.* The Act provides that each agency shall submit an annual report to the Committees on the Judiciary of the House of Representatives and of the Senate describing actions taken and results achieved under this Act during the previous year. This requirement applies to any agency that may be the principal investigative agency in a murder investigation. An individual agency need not submit a separate report if the required information with respect to the agency is included in a report submitted to the Committees by another organizational unit of the government.

(b) *Contents of report.* The Act provides that the report described in paragraph (a) of this section shall include—

(1) The number of written applications filed with the agency pursuant to section 2(a) of the Act and § 95.3(a);

(2) The number of extensions granted, and an explanation of reasons provided under section 2(h) of the Act and § 95.4(d);

(3) The number of full reinvestigations initiated and closed pursuant to section 4 of the Act and § 95.5; and

(4) Statistics and individualized information on topics that include identified suspects, arrests, charges, and convictions for reviews under section 2 of the Act and § 95.3 and reinvestigations under section 4 of the Act and § 95.5.

§ 95.12 Withholding information.

Nothing in the Act or this part requires an agency to provide information that would endanger the safety of any person, unreasonably impede an ongoing investigation, violate a court order, or violate legal obligations regarding privacy.

Dated: January 13, 2025.

Merrick B. Garland,

Attorney General.

[FR Doc. 2025–01159 Filed 1–16–25; 8:45 am]

BILLING CODE 4410–18–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4006, 4007, 4010, 4041, 4041A, 4043, 4065, 4203, 4204, 4207, 4211, 4219, 4220, 4233, 4262, 4281, and 4909

RIN 1212–AB51

Miscellaneous Corrections, Clarifications, and Improvements

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) proposes miscellaneous technical corrections, clarifications, and improvements to its regulations, including its regulations on premium rates, premium due dates, and termination of single-employer plans. These changes are a result of PBGC's ongoing retrospective review of the effectiveness and clarity of its rules and of statutory changes.

DATES: Comments must be submitted on or before March 24, 2025 to be assured of consideration.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.* Refer to 1212–AB51 in the subject line.
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101.

Commenters are strongly encouraged to submit comments electronically. Commenters who submit comments on paper by mail should allow sufficient time for mailed comments to be received before the close of the comment period. All submissions must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and the Regulation Identifier Number (RIN) for this rulemaking (RIN 1212–AB51). Comments received will be posted without change to PBGC's website, *www.pbgc.gov,* including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information.

Copies of comments may also be obtained by writing to Disclosure Division (*disclosure@pbgc.gov*), Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, or calling 202–326–4040 during normal business hours. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Monica O'Donnell (*odonnell.monica@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–229–8706. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose and Authority

The purpose of this regulatory action is to make miscellaneous technical corrections, clarifications, updates, and improvements to several of the Pension Benefit Guaranty Corporation's (PBGC's) regulations. These changes are based on PBGC's ongoing retrospective review of the effectiveness and clarity of its rules

and on statutory changes to the Employee Retirement Income Security Act of 1974 (ERISA).

Legal authority for this action comes from section 4002(b)(3) of ERISA which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA. It also comes from section 4006 of ERISA (Premium Rates), section 4007 of ERISA (Payment of Premiums), section 4010 of ERISA (Authority to Require Certain Information), section 4041 of ERISA (Termination of Single-Employer Plans), section 4041A of ERISA (Termination of Multiemployer Plans), section 4043 of ERISA (Reportable Events), section 4065 of ERISA (Annual Report of Plan Administrator), section 4203 of ERISA (Complete Withdrawal), section 4204 of ERISA (Sale of Assets), section 4207 of ERISA (Reduction or Waiver of Complete Withdrawal Liability), section 4211 of ERISA (Methods for Computing Withdrawal Liability), section 4219 of ERISA (Notice, Collection, Etc., of Withdrawal Liability), section 4220 of ERISA (Approval of Amendments), section 4233 of ERISA (Partitions of Eligible Multiemployer Plans), section 4262 of ERISA (Special Financial Assistance by the Corporation), and section 4281 of ERISA (Benefits Under Certain Terminated Plans).

Major Provisions

The major provisions of this proposed rulemaking would amend PBGC's regulations on:

- Premium Rates, by codifying the changes of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) (Pub. L. 116–94, Division O) applicable to cooperative and small employer charity (CSEC) plans [1] and certain community newspaper plans; [2]
- Payment of Premiums, by revising the due date for the final premium for terminating plans to be the earlier of the normal premium due date or 45 days after the date the post-distribution certification is filed; and
- Termination of Single-Employer Plans, by setting due dates for the standard termination notice and notice of intent to terminate where the plan administrator has not provided a proposed termination date, and by adding additional criteria majority owners must meet to waive their benefits if they are owners through constructive ownership.

Background

PBGC administers two insurance programs for private-sector defined benefit pension plans under title IV of ERISA: a single-employer plan termination insurance program and a multiemployer plan insolvency insurance program. In addition, PBGC administers a special financial assistance program for certain financially distressed multiemployer plans. The amendments proposed in this rulemaking apply primarily to the single-employer plan termination insurance program.

Proposed Amendments

The proposed technical and clarifying amendments and improvements to PBGC's regulations are discussed below. PBGC invites comment on these proposals.

Premium Rates—29 CFR Part 4006

Sponsors of plans covered under PBGC's single-employer program are subject to rules requiring the calculation and payment of annual premiums to PBGC under section 4006 of ERISA and PBGC's regulation on Premium Rates (29 CFR part 4006), ''premium rates regulation.'' The SECURE Act modified the calculation of premiums under section 4006 of ERISA for a CSEC plan and the funding requirements for a community newspaper plan under section 303(m) of ERISA and section 430(m) of the Internal Revenue Code (the Code). The SECURE Act also modified section 401 of the Code to allow an employer to adopt a new pension plan and elect to treat the plan as if it had been adopted during the prior taxable year. PBGC proposes to amend its premium rates regulation to account for these SECURE Act modifications.

CSEC Plans—Variable Rate Premiums

The SECURE Act modified flat and variable rate premiums and changed the way the variable rate premium is calculated for CSEC plans first effective for 2019.[3] Under section 4006(a)(3)(A) of ERISA, as amended by the SECURE Act, CSEC plans calculate the variable rate premiums that they owe to PBGC based on alternative minimum funding standards. CSEC plans now apply an alternate definition of unfunded vested benefits (UVBs). This definition refers to the funding liability of the CSEC plan as determined under section 306(j)(5)(C) of ERISA and section 433(j)(5)(C) of the Code. PBGC issued guidance [4] on these changes and incorporated the special premium rules for CSEC plans into the premium filing instructions starting with the 2021 filing instructions.

Although the rules have been in place for several years, PBGC is now proposing to amend its premium rates regulation to codify the SECURE Act changes regarding how CSEC plans determine UVBs for the purpose of calculating variable rate premiums. First, proposed new § 4006.5(h) would provide the rules to calculate a CSEC plan's ''premium funding target'' using the alternate definition of UVBs as provided in section 306(j)(5)(C) of ERISA and section 433(j)(5)(C) of the Code. In addition, PBGC would make conforming amendments to §§ 4006.2, 4006.4(b)(1) and 4006.4(f)(2) to further conform to changes under the SECURE Act for CSEC plans.

Community Newspaper Plans

The SECURE Act amended section 430 of the Code and section 303 of ERISA, providing that community newspaper plans may elect to use alternative minimum funding standards.[5] However, section 4006 of ERISA was not similarly amended, so community newspaper plans are not permitted to use these alternative standards to calculate the premiums that they owe to PBGC. PBGC proposes to add a reference to community newspaper plans in § 4006.4(f) to denote them as plans subject to special funding rules, which are disregarded for purposes of determining UVBs.

Definition of New Plan

Under PBGC's premium rates regulation and its regulation on Payment of Premiums (29 CFR part 4007) ''payment of premiums regulation,'' plans that are newly adopted are subject to special rules concerning calculations and payment of premiums. Before the SECURE Act, a ''new plan'' meant a plan that did not exist before the premium payment year. Following the SECURE Act, which allows employers to elect to treat newly adopted plans as having been adopted during the prior tax year, this definition must be changed. The current definition does not account for newly adopted plans that employers have elected to treat as having a retroactive effective

[1] A CSEC plan is a plan maintained by multiple employers, most of which are rural cooperatives, charities, or agricultural cooperatives or maintained by a rural telephone cooperative association. *See* section 104 of the Pension Protection Act, Public Law 109–280.

[2] A community newspaper plan means a plan as defined in section 303(m)(5) of ERISA and section 430(m)(5) of the Code.

[3] The SECURE Act's reduced premium rates applicable to CSEC plans are reflected in § 4006.3(a) and (b) of PBGC's premium rates regulation.

[4] PBGC Technical Update 20–1 (2020).

[5] Section 9707 of the American Rescue Plan Act of 2021, Public Law 117–2, further modified the definition of the term ''eligible newspaper plan sponsor,'' but that modification does not require additional changes to part 4006.

date. Accordingly, PBGC proposes to change the definition of ''New plan'' in § 4006.2 to mean a plan with an effective date during the premium payment year.

Payment of Premiums—29 CFR Part 4007

The final step in a plan's standard termination is the filing of the post-distribution certification under § 4041.29 of PBGC's regulation on Termination of Single-Employer Plans (29 CFR part 4041). The plan administrator of the terminating plan must file the certification (on PBGC Form 501) within 30 days of the final benefits distribution date, or within 60 days of the final benefits distribution date if it certifies to PBGC within 30 days after the final benefits distribution date that the plan assets have been distributed as required. Before 2014, the final premium filing for a terminating plan was due on the same date it would have been due if the plan had not terminated (*i.e.,* the 15th day of the 10th month after the plan year began). However, there were instances in which plan administrators of terminating plans neglected to file the final premium filing by the time it was due because the due date was several months after the Form 501 was filed. PBGC found that in some of these cases, especially when the plan sponsor was no longer in business by the final premium due date, it was difficult for the plan administrator to go back or even reconstruct records to calculate and pay premiums, as well as pay the late payment interest and penalties that PBGC assessed.

In 2014, PBGC amended its payment of premiums regulation by revising the premium due date rules for terminating plans.[6] This was intended to facilitate the timely payment of these final year premiums for terminating plans and to relieve them of the burden of calculating premiums long after the final distributions were made. This rule set the due date for the final premium filing for a terminating plan as the earlier of (1) the normal premium due date found in § 4007.11(a), or (2) the date when the post-distribution certification is filed. Therefore, a plan that closes out in the first eight-and-a-half months of its final plan year faces an accelerated premium filing due date.[7]

Practitioners have informed PBGC that in some cases, it is challenging to prepare and submit both the post-distribution certification (*i.e.,* PBGC Form 501) and the final premium filing on the same day. As a result of these challenges, some plan administrators have missed filing due dates and been assessed late premium payment charges.

For the reasons described in the 2014 rule and above, PBGC still believes it is important to have an accelerated premium due date for plans that complete a standard termination long before the ''normal'' premium due date. However, to reduce the administrative difficulties and related possibility of late or missed filings, PBGC proposes to amend § 4007.11(d)(2) to revise the due date for the final premium filing to be the earlier of (1) the normal premium due date, or (2) 45 days after the date the post-distribution certification is filed.

Termination of Single-Employer Plans—29 CFR Part 4041

Under section 4041 of ERISA, a single-employer plan can terminate in either a standard termination or a distress termination. A plan administrator of a single-employer plan covered by PBGC's termination insurance program that has sufficient assets to provide all plan benefits may voluntarily terminate the plan in a standard termination. The rules governing standard terminations are in section 4041 of ERISA and subpart B of PBGC's regulation on Termination of Single-Employer Plans (29 CFR part 4041), ''termination regulation.'' Within specified timeframes, a plan administrator must notify participants of the proposed termination; provide participants detailed information on their plan benefits; file certain information with PBGC; and, absent the issuance of a notice of noncompliance by PBGC, distribute plan assets to satisfy all plan benefits under the plan.

A single-employer plan insured by PBGC that does not have sufficient assets to pay all plan benefits owed to participants and beneficiaries but does have sufficient assets to pay benefits guaranteed by PBGC, may terminate voluntarily in a distress termination only if the employer and the members of the employer's ''controlled group'' of affiliated companies meet certain statutory requirements.

Majority Owner

Under PBGC's termination regulation, in the event that a plan lacks sufficient funds to pay required plan benefits, a majority owner may forgo receipt of their plan benefits (1) to enable the plan to satisfy all other plan benefits in a standard termination,[8] or (2) in connection with a distress termination.[9] In a standard termination, the election to waive payment of benefits is permitted only to facilitate the standard termination. This alternative treatment of a majority owner's plan benefit is only valid if the election is in writing; requisite spousal consent criteria is met, if applicable; and the majority owner's election and the spouse's consent does not violate a qualified domestic relations order.[10] A majority owner electing to forgo receipt of their plan benefits in a distress termination must meet these same criteria as a majority owner in a standard termination, but in addition, must receive PBGC approval if such election is made after the termination date and would result in PBGC determining that the plan is sufficient for guaranteed benefits under paragraph (c) of § 4041.47.[11]

The term ''majority owner'' is defined under § 4041.2 of the termination regulation as a person who owns, directly or indirectly, 50 percent or more, taking into account the constructive ownership rules of sections 414(b) and (c) of the Code, of an unincorporated trade or business; the capital interest or profits interest in a partnership; or either the voting stock of a corporation or the value of all of the stock of a corporation. One way in which a person can become a majority owner is through an option agreement to acquire stock. If a person has an option to acquire stock, that stock is considered as owned by the person who holds the option.[12]

PBGC is concerned that the rules in the current regulation do not effectively eliminate the risk of participants being coerced to waive their benefits as ''majority owners'' when they are given ownership options by the plan sponsor in anticipation of plan termination. To avoid such potential coercion, PBGC proposes to amend the criteria individuals must meet to waive their benefits by modifying its application of the constructive ownership rules. Under the proposal, if the majority owner has an option to acquire any outstanding interest in an organization, such interest

[6] *See* 79 FR 13547, 13562 (Mar. 11, 2014).

[7] Because of a provision in the Bipartisan Budget Act of 2015 that supersedes § 4007.11 of PBGC's Payment of Premiums regulation, premium filings for plan years beginning in 2025 are due on the 15th day of the 9th calendar month in the plan year, including plans that, in any other year, would be subject to the special rule for plans closing out in the first eight-and-a-half months of its final plan year. *See* Bipartisan Budget Act of 2015, Public Law 114–74, Title V, Sect. 502 (2015). *See also* PBGC Technical Update 25–1 (2025).

[8] 29 CFR 4041.21(b)(2).

[9] 29 CFR 4041.47(d).

[10] 29 CFR 4041.21(b)(2)(i)–(iv).

[11] 29 CFR 4041.47(d).

[12] 26 U.S.C. 1563(e)(1).

will be considered as owned by such person by an option agreement under 26 CFR 1.414(c)–4(b)(1) if the person directly owns 5 percent or more of the unincorporated business or trade, capital interest or the profits interest in a partnership, or either 5 percent or more of the voting stock of a corporation or the value of all the stock of a corporation.[13] Alternatively, if the person does not have a 5 percent or more direct ownership interest, the person would be able to qualify as a majority owner under an option agreement if the person has been a member of the board of directors, a fiduciary, or participated in the management of the plan sponsor for each of the 3 years immediately preceding the date of plan termination. These exceptions to the ownership rules are intended to minimize the potential misuse of option agreements and protect the benefits of participants who are not direct owners or who have not participated in the management of the plan sponsor.

Clarifying Due Dates

To complete a standard termination, the plan administrator must: (1) issue notices of intent to terminate and notices of plan benefits to participants, beneficiaries, and other affected parties; (2) file a standard termination notice and post-distribution certification with PBGC; and (3) distribute the plan's assets in satisfaction of the plan's benefit liabilities. Under § 4041.25(a), the standard termination notice is due on or before the 180th day after the proposed termination date. Under § 4041.25(b), a plan's date of termination is the later of the date specified in the standard termination notice or the date specified in the notice of intent to terminate (but not later than 90 days after the earliest date a notice of intent to terminate was provided to any party). However, if the plan administrator fails to specify such date in the notice of intent to terminate and/or fails to file a standard termination notice (thus failing to declare a proposed termination date), then the due date for the standard termination notice is unclear. PBGC proposes, in such cases, to clarify this ambiguity by clearly establishing a due date for the standard termination notice that does not depend on the declaration of a proposed termination date. Under the proposed rule, § 4041.25(a) would be modified such that the due date for a standard termination notice is the earlier of: (1) 180 days after the plan's proposed termination date as specified in the standard termination notice; or (2) 60 days before making any distribution governed by section 4041(b) of ERISA. Thus, the due date for a standard termination notice, where the notice is not filed with PBGC, will be 60 days before distributions begin, and PBGC may assess penalties for the missed filing from that point going forward.

PBGC is also proposing a corresponding change to § 4041.29(b), which provides to plan administrators who timely filed a standard termination notice a 90-day grace period for the assessment of penalties for an untimely post-distribution certification. This section would be modified such that the grace period continues to be available but only if the plan administrator filed a standard termination notice within 180 days of the proposed termination date.

Other Clarifications, Corrections, and Updates

Filing, Issuance, Computation of Time, and Record Retention—29 CFR Part 4000

PBGC proposes to amend its regulation on Filing, Issuance, Computation of Time, and Record Retention (29 CFR part 4000) to require electronic filing by plans of standard termination filings, missing participant filings, and coverage determination forms. These filings are made by plans and practitioners representing plans, and not by individual participants. Filing this information electronically (by email or through an e-filing portal) is currently optional. However, because electronic filing is more efficient for both PBGC and filers and has become the standard method of filing for PBGC's regulated community, PBGC proposes to amend § 4000.3(b) to require electronic filing by plans for standard termination filings under subpart B of 29 CFR part 4041, missing participant filings under 29 CFR part 4050, and coverage determination forms under section 4021 of ERISA, in accordance with instructions on PBGC's website at *www.pbgc.gov.*

The proposed rule also makes other clarifying and editorial changes to part 4000.

Annual Financial and Actuarial Information Reporting—29 CFR Part 4010

Under PBGC's regulation on Annual Financial and Actuarial Information Reporting (29 CFR part 4010), certain underfunded plans[14] must annually report identifying, financial, and actuarial information to PBGC. Section 4010.8(a)(12) provides that the actuarial information must be certified, in writing, by an enrolled actuary. PBGC proposes to amend this paragraph so that the filing instructions, not the regulation, provide the rules about the certification (*i.e.,* what information must be contained in the certification and how to complete the certification). This proposed amendment is intended to give PBGC greater flexibility to consider methods other than written certifications, such as e-certifications, in the future.

Reportable Events and Certain Other Notification Requirements—29 CFR Part 4043

Plan administrators and contributing sponsors are responsible for notifying PBGC in the event of a reportable event under section 4043 of ERISA or a failure to make certain required contributions under section 303(k)(4) of ERISA or section 430(k)(4) of the Code. PBGC's regulation on Reportable Events and Certain Other Notification Requirements (29 CFR part 4043), the ''reportable events regulation,'' prescribes the requirements for notifying PBGC of one of these circumstances. Filers must submit these notices using PBGC's e-filing portal. The e-filing portal, available for submitting notices for reportable events since 2016, offers a secure application for submitting reportable events information. Currently, under § 4043.3(a)(3), the language states that if notices are required for two or more events, the notices can be combined into one filing. This provision was originally intended to make filing paper notices easier by allowing filers to combine paper notices into one filing. However, this provision is obsolete as under the e-filing portal, the filer is prompted to enter information for only one reportable event per filing. This method is not burdensome for filers as information about the filer is saved in the e-filing portal and does not need to be re-entered for each filing. Therefore, PBGC is proposing to remove the obsolete language in § 4043.3(a)(3).

PBGC is also proposing changes to § 4043.62 of the reportable events regulation. In 2020, § 4043.29 was amended to clarify that PBGC does not need notice of a change in the contributing sponsor to a plan if the change does not result in a contributing sponsor ceasing to be a member of the plan's controlled group.[15] Therefore, the heading of § 4043.29 was revised to remove ''contributing sponsor,'' and the

[13] 26 CFR 1.414(c)–3(d)(2).

[14] A filer is described in § 4010.4.

[15] *See* 85 FR 6046, 6049 (Feb. 4, 2020).

description of reportable event was revised to provide that a reportable event occurs for a plan when there is a transaction that results, or will result, in one or more persons (including any person who is or was a contributing sponsor) ceasing to be a member of the plan's controlled group (other than by merger involving members of the same controlled group). The advance notice requirement in § 4043.62 refers to the description of the event that must be reported under § 4043.29. To conform with changes made to § 4043.29 in 2020, PBGC proposes to amend the heading of § 4043.62 by removing ''contributing sponsor or,'' and proposes to amend paragraph (a) of § 4043.62 to remove ''contributing sponsor or.'' These amendments would clarify and minimize confusion as to the advance notice requirement for a change in controlled group.

Allocating Unfunded Vested Benefits To Withdrawing Employers—29 CFR Part 4211

Under PBGC's regulation on Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR part 4211), a plan is responsible for determining the amount of unfunded vested benefits to be allocated to the withdrawing employer and using one of four methods to do so. Under § 4211.23, PBGC can approve an alternative allocation method or modification to an allocation method if such change or modification would not significantly increase the risk of loss to plan participants and beneficiaries or to PBGC.

PBGC proposes to amend paragraph (c) of § 4211.23 by removing language that implies that reconsideration of PBGC's decision on an alternative allocation method or modification to an allocation method is a right of a plan sponsor. Per PBGC's regulations on Rules for Administrative Review of Agency Decision (29 CFR part 4003), decisions made by PBGC under 29 CFR part 4211 are not subject to either appeal or reconsideration. Instead, PBGC has the authority to review, upon request or its own initiative, determinations when it is deemed to be appropriate. This proposed change will clarify that a plan sponsor may request review of PBGC's decision regarding an alternative allocation method.

Partitions of Eligible Multiemployer Plans—29 CFR Part 4233

A multiemployer plan that is seeking partition must comply with the requirements set forth under PBGC's regulation on Partitions of Eligible Multiemployer Plans (29 CFR part 4233). The specific application filing requirements are outlined in § 4233.3, including a specific statement under penalties of perjury that the plan sponsor must use with the signed and dated application for partition.

PBGC proposes to amend paragraph (b) of § 4233.3 to better comply with the affidavit requirements prescribed by the Department of Justice for perjury cases under 28 U.S.C. 1746. The new language for the affidavit must include language specifically referring to the penalty of perjury ''under the laws of the United States of America'' to adhere the sample form outlined in paragraph (1) of 28 U.S.C. 1746.

Special Financial Assistance by PBGC—29 CFR Part 4262

Under the Special Financial Assistance by PBGC regulation (29 CFR part 4262), PBGC is amending paragraph (h)(3)(iv)(B) of § 4262.16 by changing the reference from ''section 4291(b)(1)(A) of ERISA'' to ''section 4219(b)(1)(A) of ERISA.''

OMB Control Numbers for PBGC Information Collection Requirements—29 CFR Part 4909

PBGC proposes to add a chart in currently reserved part 4909 which would display, per the requirements of 5 CFR 1320.5(b)(2)(ii)(C), the Office of Management and Budget control numbers of PBGC information collections for which there is no corresponding paper or electronic form. This change is intended for better organization and clarity. In addition, PBGC proposes to remove outdated or duplicative OMB control numbers from the following sections: 4007.12, 4010.15, 4041A.11, 4065.3, 4203.6, 4204.11, 4204.21, 4207.10, 4211.22, 4219.20, 4220.3, and 4281.4.

Compliance With Rulemaking Guidelines

Executive Orders 12866 and 13563

The Office of Management and Budget (OMB) has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866. Accordingly, OMB has not reviewed the proposed rule under Executive Order 12866.

Executive Order 12866 directs 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).

Although this is not a significant regulatory action under Executive Order 12866, PBGC has examined the economic and policy implications of this proposed rule. Most of the proposed amendments, including those to parts 4006, 4007, 4010, and 4041, clarify regulations or conform regulations to statutory changes, or are otherwise cost-neutral in their impact.

Section 6 of Executive Order 13563 requires agencies to rethink existing regulations by periodically reviewing their regulatory program for rules that ''may be outmoded, ineffective, insufficient, or excessively burdensome.'' These rules should be modified, streamlined, expanded, or repealed as appropriate. PBGC has identified technical corrections, clarifications, and improvements to some of its regulations and has included those amendments in this proposed rulemaking. PBGC expects to propose periodic rulemakings of this nature.

Regulatory Flexibility Act

The Regulatory Flexibility Act [16] (RFA) imposes certain requirements respecting rules that are subject to the notice-and-comment requirements of section 553(b) of the Administrative Procedure Act, or any other law,[17] and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the proposed rule describing the impact of the rule on small entities and seek public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.[18]

For purposes of the RFA requirements with respect to this proposed rule, PBGC considers a small entity to be a plan with fewer than 100 participants.[19] This is substantially the same criterion PBGC uses in other regulations [20] and is consistent with certain requirements in

[16] 5 U.S.C. 601 *et seq.*

[17] The applicable definition of ''rule'' is found in section 601 of the RFA. *See* 5 U.S.C. 601(2).

[18] The applicable definitions of ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' are found in section 601 of the RFA. *See* 5 U.S.C. 601.

[19] PBGC consulted with the Small Business Administration's Office of Advocacy before making this determination. Memorandum received from the U.S. Small Business Administration, Office of Advocacy on March 9, 2021.

[20] *See, e.g.,* special rules for small plans under part 4007 (Payment of Premiums).

title I of ERISA [21] and the Code,[22] as well as the definition of a small entity that PBGC and the Department of Labor (DOL) have used for purposes of the RFA.[23]

Further, while some large employers operate small plans along with larger ones, in general, most small plans are maintained by small employers. PBGC believes that assessing the impact of the final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. PBGC therefore requests comments on the appropriateness of the size standard used in evaluating the impact on small entities of this proposed rule.

Based on its proposed definition of small entity, PBGC certifies under section 605(b) of the RFA that the amendments in this proposed rule would not have a significant economic impact on a substantial number of small entities. As explained above under ''Executive Orders 12866 and 13563,'' most of the proposed amendments offer clarifications or conform the regulation to statutory changes and thus are neutral in their impact. For instance, the clarification of deadlines of standard termination filings under part 4041 does not impose any new requirements, but rather clarifies existing ones. While it is possible that individual small plans may be impacted by this change, the overall effect on small plans will not be significant. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

Paperwork Reduction Act

This proposed rule contains collections of information that PBGC has submitted to OMB for review and approval under the Paperwork Reduction Act (PRA). OMB's decision regarding these information collection requests will be available at *http://www.reginfo.gov.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Most of the changes PBGC expects to make are revisions to filing instructions, where necessary or helpful, to incorporate the clarifications in the proposed rule. Therefore, PBGC estimates that the proposed rule will have no impact on the hour and cost burden of reporting as described below.

Termination of Single-Employer Plans Regulation

The collection of information under part 4041 is approved under OMB control number 1212–0036 (expires March 31, 2026). The current information collection requirements have an estimated annual hour burden of 41,730 hours and a cost burden of $8,509,747.

PBGC's Standard Termination Filing Instructions would be updated to reflect the changes in this proposed rule to make clear that the forms under OMB control number 1212–0036 must be submitted electronically (by email or through the e-filing portal) and eliminate the option of filing paper forms. In addition, PBGC is making other editorial and clarifying changes to both the standard termination and distress termination instructions. The clarifications incorporated into the instructions would replace or augment existing language but would not create additional filing burden.

Annual Financial and Actuarial Information Reporting Regulation

The collection of information under part 4010 is approved under OMB control number 1212–0049 (expires February 28, 2026). The current information collection requirements have an estimated annual hour burden of 800 hours and a cost burden of $11,080,000.

PBGC's ERISA 4010 Filing Instructions would be updated to reflect the change in this proposed rule to include the rules about the certification of actuarial information submitted by certain underfunded plans. The change incorporated into the instructions would replace or augment existing language but would not create additional filing burden.

Missing Participants Regulation

The collection of information under part 4050 is approved under OMB control number 1212–0069 (expires November 30, 2026). The current information collection requirements have an estimated annual hour burden of 70 hours and a cost burden of $497,835.

PBGC's Missing Participants Instructions would be updated to reflect the changes in this proposed rule to make clear that the forms under OMB control number 1212–0069 must be submitted electronically (by email or through an e-filing portal) and eliminate the option of filing paper forms. The clarifications incorporated into the instructions would replace or augment existing language but would not create additional filing burden.

Premium Filing Regulation

The collection of information under part 4007 is approved under OMB control number 1212–0009 (expires December 31, 2026). The current information collection requirements have an estimated annual hour burden of 13,565 hours and a cost burden of $21,661,676.

PBGC's Comprehensive Premium Instructions would be updated to reflect the changes in this proposed rule to change the options for the final premium filing due date. The clarifications incorporated into the instructions would replace or augment existing language but would not create additional filing burden.

PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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).

List of Subjects

29 CFR Part 4000

Administrative practice and procedure, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4006

Employee benefit plans, Pension insurance.

[21] *See, e.g.,* section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

[22] *See, e.g.,* section 430(g)(2)(B) of the Code, which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

[23] *See, e.g.,* PBGC's proposed rule on Reportable Events and Certain Other Notification Requirements, 78 FR 20039, 20057 (Apr. 3, 2013) and DOL's final rule on Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications, 89 FR 4662, 4690 (Jan. 24, 2024).

29 CFR Part 4007

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4010

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4041

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4041A

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4043

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4065

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4203

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4204

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4207

Employee benefit plans; Pension insurance.

29 CFR Part 4211

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements.

29 CFR Part 4219

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements.

29 CFR Part 4220

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements.

29 CFR Part 4233

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements.

29 CFR Part 4262

Employee benefits plans; Pension insurance; Pensions; Reporting and recordkeeping requirements.

29 CFR Part 4281

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements.

29 CFR Part 4909

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

In consideration of the foregoing, PBGC proposes to amend 29 CFR chapter XL as follows.

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

■ 1. The authority citation for part 4000 continues to read as follows:

Authority: 29 U.S.C. 1083(k), 1302(b)(3).

§ 4000.3 [Amended]

■ 2. Amend § 4000.3 by:

■ a. Removing the words ''the PBGC'' and ''the PBGC's'' and adding in their places the words ''PBGC'' and ''PBGC's'', respectively, wherever they appear;

■ b. Removing the words ''Web site'' and adding in their place the word ''website'' wherever they appear in paragraph (b);

■ c. Adding paragraphs (b)(5), (6), and (7); and

■ d. Removing '', including permitted filing methods, fax numbers, and mail and email addresses,'' in paragraph (c) introductory text.

The additions read as follows:

§ 4000.3 What methods of filing may I use?

* * * * *

(b) * * *

(5) You must submit the information required under subpart B of part 4041 of this chapter electronically in accordance with the instructions on PBGC's website, except as otherwise provided by PBGC.

(6) You must submit the information required under part 4050 of this chapter electronically in accordance with the instructions on PBGC's website, except as otherwise provided by PBGC.

(7) You must submit the information necessary to request a coverage determination under section 4021 of ERISA electronically in accordance with the instructions on PBGC's website, except as otherwise provided by PBGC.

* * * * *

PART 4006—PREMIUM RATES

■ 3. The authority citation for part 4006 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

■ 4. Amend § 4006.2 as follows:

■ a. Add a definition of ''CSEC plan'' in alphabetical order;

■ b. In the first sentence of the definition of ''New plan,'' remove ''that did not exist before'' and add in its place ''with an effective date during''; and

■ c. In the definition of ''UVB valuation date,'' remove ''in accordance with ERISA section 303(g)(2)'' and add in its place ''for a plan other than a CSEC plan in accordance with ERISA section 303(g)(2) and for a CSEC plan in accordance with ERISA section 306(c)(8)(B)(i) without regard to section 306(c)(8)(B)(ii)''.

The addition reads as follows:

§ 4006.2 Definitions.

* * * * *

CSEC plan means a plan as defined in section 210(f)(1) of ERISA.

* * * * *

■ 5. Amend § 4006.4 by revising paragraphs (b)(1) and (f)(2) to read as follows:

§ 4006.4 Determination of unfunded vested benefits.

* * * * *

(b) * * *

(1) *In general.* A plan's premium funding target is its standard premium funding target under paragraph (b)(2) of this section, except that—

(i) If the plan is not a CSEC plan and an election to use the alternative premium funding target under § 4006.5(g) is in effect, its premium funding target is its alternative premium funding target under § 4006.5(g), and;

(ii) If the plan is a CSEC plan, its premium funding target is determined under § 4006.5(h).

* * * * *

(f) * * *

(2) Section 303(m) of ERISA and section 430(m) of the Code, dealing with defined benefit pension plans maintained by certain community newspapers.

■ 6. Amend § 4006.5 by adding paragraph (h) to read as follows:

§ 4006.5 Exemptions and special rules.

* * * * *

(h) *CSEC plan premium funding target.* The premium funding target of a CSEC plan is its funding liability as determined under section 306(j)(5)(C) of ERISA for the UVB valuation year taking only vested benefits into account.

PART 4007—PAYMENT OF PREMIUMS

■ 7. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

■ 8. Amend § 4007.11 by revising paragraph (d)(2) to read as follows:

§ 4007.11 Due Dates

* * * * *

(d) * * *

(2) Forty-five (45) days after the date the post-distribution certification under § 4041.29 of this chapter is filed.

* * * * *

§ 4007.12 [Amended]

■ 9. Amend § 4007.12 by removing ''(Approved by the Office of Management and Budget under control number 1212–0009)''.

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

■ 10. The authority citation for part 4010 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1310.

■ 11. Amend § 4010.8 by revising paragraph (a)(12) to read as follows:

§ 4010.8 Plan actuarial information.

(a) * * *

(12) Certification of the actuarial information by an enrolled actuary, as described in the related filing instructions and permitted under 26 CFR 301.6059–1(d).

* * * * *

§ 4010.15 [Removed]

■ 12. Remove § 4010.15.

PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

■ 13. The authority citation for part 4041 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

■ 14. Amend § 4041.21 by adding paragraph (b)(2)(v) to read as follows:

§ 4041.21 Requirements for a standard termination.

* * * * *

(b) * * *

(2) * * *

(v) In any case in which the majority owner has an option to acquire any outstanding interest in an organization, such interest will be considered as owned by such person only if the following requirements are met:

(A) The person has a 5 percent or more direct ownership interest, or

(B) Such person has been a member of the board of directors, a fiduciary, or participated in the management of the plan sponsor for each of the 3 years immediately preceding the date of the plan termination.

■ 15. Amend § 4041.25 by revising paragraph (a) to read as follows:

§ 4041.25 Standard termination notice.

(a) *Notice requirement.* The plan administrator must file with PBGC a standard termination notice, consisting of PBGC Form 500, completed in accordance with the instructions thereto, on or before the earlier of—

(1) One hundred-eighty (180) days after the proposed termination date; or

(2) Sixty (60) days before making any distribution governed by section 4041(b) of ERISA and this part.

* * * * *

■ 16. Amend § 4041.29 by revising paragraph (b) to read as follows:

§ 4041.29 Post-distribution certification.

* * * * *

(b) *Penalty considerations.* If a standard termination notice is filed in accordance with § 4041.25(a)(1), PBGC may assess a penalty for a late filing under paragraph (a) of this section only if the required information is filed more than 90 days after the distribution deadline (including extensions) under § 4041.28(a).

§ 4041.47 [Amended]

■ 17. Amend § 4041.47 by removing ''§ 4041.21(b)(2)(i) through (iv)'' and adding in its place ''§ 4041.21(b)(2)(i) through (v)'' in paragraph (d)(1).

PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

■ 18. The authority citation for part 4041A continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1431, 1441.

§ 4041A.11 [Amended]

■ 19. Amend § 4041A.11 by removing ''(Approved by the Office of Management and Budget under control number 1212–0020)''.

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

■ 20. The authority citation for part 4043 continues to read as follows:

Authority: 29 U.S.C. 1083(k), 1302(b)(3), 1343.

§ 4043.3 [Amended]

■ 21. Amend § 4043.3 by removing the last sentence of paragraph (a)(3).

■ 22. Amend § 4043.62 by revising the section heading and paragraph (a) to read as follows:

§ 4043.62 Change in controlled group.

(a) *Reportable event.* Advance notice is required for a change in a plan's controlled group, as described in § 4043.29(a).

* * * * *

PART 4065—ANNUAL REPORT

■ 23. The authority citation for part 4065 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1365.

§ 4065.3 [Amended]

■ 24. Amend § 4065.3 by removing ''(Approved by the Office of Management and Budget under control number 1212–0026)''.

PART 4203—EXTENSION OF SPECIAL WITHDRAWAL LIABILITY RULES

■ 25. The authority citation for part 4203 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

§ 4203.6 [Removed]

■ 26. Remove § 4203.6.

PART 4204—VARIANCES FOR SALE OF ASSETS

■ 27. The authority citation for part 4204 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1384(c).

§ 4204.11 [Amended]

■ 28. Amend § 4204.11 by removing ''(Approved by the Office of Management and Budget under control number 1212–0021)''.

§ 4204.21 [Amended]

■ 29. Amend § 4204.21 by removing ''(Approved by the Office of Management and Budget under control number 1212–0021)''.

PART 4207—REDUCTION OR WAIVER OF COMPLETE WITHDRAWAL LIABILITY

■ 30. The authority citation for part 4207 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1387.

§ 4207.10 [Amended]

■ 31. Amend § 4207.10 by removing ''(Approved by the Office of Management and Budget under control number 1212–0044)''.

PART 4211—ALLOCATING UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS

■ 32. The authority citation for part 4211 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3); 1391(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f).

§ 4211.22 [Amended]

■ 33. Amend § 4211.22 by removing ''(Approved by the Office of Management and Budget under control number 1212–0035)''.

§ 4211.23 [Amended]

■ 34. Amend § 4211.23 by removing ''of the sponsor's right to request a reconsideration of the decision pursuant to part 4003 of this chapter'' and adding in its place ''that the plan sponsor may request review of the decision'' in paragraph (c).

PART 4219—NOTICE, COLLECTION, AND REDETERMINATION OF WITHDRAWAL LIABILITY

■ 35. The authority citation for part 4219 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

§ 4219.20 [Removed]

■ 36. Remove § 4219.20.

PART 4220—PROCEDURES FOR PBGC APPROVAL OF PLAN AMENDMENTS

■ 37. The authority citation for part 4220 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1400.

§ 4220.3 [Amended]

■ 38. Amend § 4220.3 by removing ''(Approved by the Office of Management and Budget under control number 1212–0031)''.

PART 4233—PARTITIONS OF ELIGIBLE MULTIEMPLOYER PLANS

■ 39. The authority citation for part 4233 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1413.

■ 40. Amend § 4233.3 by revising the second sentence in paragraph (b) to read as follows:

§ 4233.3 Application filing requirements.

* * * * *

(b) * * * The application must be signed and dated by an authorized trustee who is a current member of the board of trustees, and must include the following statement under penalties of perjury: ''Under penalty of perjury under the laws of the United States of America, I declare that I have examined this application, including accompanying documents, and, to the best of my knowledge and belief, the application contains all the relevant facts relating to the application; all statements of fact contained in the application are true, correct, and not misleading because of omission of any material fact; and all accompanying documents are what they purport to be.'' * * *

* * * * *

PART 4262—SPECIAL FINANCIAL ASSISTANCE BY PBGC

■ 41. The authority citation for part 4262 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1432.

§ 4262.16 [Amended]

■ 42. Amend § 4262.16 by removing the citation to ''section 4291(b)(1)(A) of ERISA'' and adding in its place ''section 4219(b)(1)(A) of ERISA'' in paragraph (h)(3)(iv)(B).

PART 4281—DUTIES OF PLAN SPONSOR FOLLOWING MASS WITHDRAWAL

■ 43. The authority citation for part 4281 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341(a), 1399(c)(1)(D), 1431, and 1441.

§ 4281.4 [Removed]

■ 44. Remove § 4281.4.

■ 45. Add part 4909, consisting of § ??.??, to read as follows:

PART 4909—OMB CONTROL NUMBERS FOR PBGC INFORMATION COLLECTION REQUIREMENTS

Authority: 29 U.S.C. 1302(b)(3), 5 CFR part 1320.

§ 4909.1 Information collection control numbers.

PBGC regulations that contain information collections requirements without corresponding written or electronic forms, questionnaires, or instructions are displayed in table 1 to this section. They are displayed along with their respective control numbers as assigned by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

TABLE 1 TO § 4909.1

Regulation(s) and Information Collection Title	OMB control No.
Part 4062, Liability for Termination of Single-Employer Plans	1212–0017
Part 4204, Variances for Sale of Assets	1212–0021
Part 4231, Mergers and Transfer Between Multiemployer Plans	1212–0022
Part 4203, Extension of Special Withdrawal Liability Rules	1212–0023
Part 4220, Procedures for PBGC Approval of Plan Amendments	1212–0031
Part 4219, Notice, Collection, and Redetermination of Withdrawal Liability	1212–0034
Part 4211, Allocating Unfunded Vested Benefits	1212–0035
Part 4208, Reduction or Waiver of Partial Withdrawal Liability	1212–0039
Part 4207, Reduction or Waiver of Complete Withdrawal Liability	1212–0044
Part 4003, Administrative Appeals (Employers)	1212–0061
Part 4003, Filings for Reconsiderations	1212–0063
Parts 4041 and 4042, Disclosure of Information in Distress and PBGC-Initiated Termination Information	1212–0065
Part 4233, Partitions of Eligible Multiemployer Plans	1212–0068

Issued in Washington, DC, by

Ann Y. Orr,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2025–00726 Filed 1–17–25; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket Number USCG–2024–0879]

RIN 1625–AA08 and 1625–AA00

Special Local Regulations & Safety Zones; USCG Sector Eastern Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend existing regulations relating to special local regulations and safety zones that occur annually in Captain of the Port Zone Eastern Great Lakes. This action is necessary to provide for the safety of life on these navigable waters. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before February 20, 2025.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0879 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT William Kelley, Waterways Management at Sector Eastern Great Lakes, U.S. Coast Guard; telephone 716–843–9343, email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

The Coast Guard lists annual marine events in the Code of Federal Regulations (CFR). For USCG Sector Eastern Great Lakes, special local regulations are listed in 33 CFR 100.901 and safety/security zones are listed in 33 CFR 165.939. Over the 2023 calendar year, the Coast Guard was notified of multiple marine events that are conducted on an annual basis. The Coast Guard previously established temporary regulations implementing safety zones or local regulations for each of the respective events. The Captain of the Port (COTP) Sector Eastern Great Lakes determined that potential hazards associated with these events would be a safety concern for anyone within boundaries defined in proposed special local regulations and safety zones during the time period of these respective events. Moreover, the COTP Sector Easter Great Lakes also seeks to rename several of the enumerated events in 33 CFR 165.939 to accurately reflect the current event names. Additionally, the COTP Sector Eastern Great Lakes also determined that some of the events currently listed in the existing regulations are no longer required.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters before, during, and after each respective scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 and 70041.

III. Discussion of Proposed Rule

The COTP is proposing to amend established special local regulations found in 33 CFR part 100.901 and established safety zone regulations found in 33 CFR part 165.939. The special local regulations and safety zones would cover various navigable waters within boundaries defined below. As stated in prior rulemakings, instituting temporary final rules for each event, the duration of the special local regulations and safety zones are intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled events. No vessel or person would be permitted to enter these zones without obtaining permission from the COTP or a designated representative. The regulatory organization, text, event details, and precise coordinates for all proposed events appear at the end of this document.

A. Proposed events for 33 CFR 100.901:

i. Henderson Harbor Sprint Triathlon, Henderson Harbor, NY: A swim loop of a triathlon from the Henderson Harbor Boat Launch around the southern branch of Henderson Harbor in Lake Ontario, on or around the second week of July. *(see § 165.T09–0413,* 87 FR 37740*)*

ii. Women Swimmin' for Hospicare, Ithaca, NY: A swim route from Ithaca Yacht Club horizontally to the Eastern shoreline of Cayuga Lake on the second Saturday of August. *(see § 160.T09–0544,* 89 FR 56677*)*

B. Proposed events for 33 CFR 165.939:

i. United Refining Company of Pennsylvania Fireworks, Erie, PA: Circular safety zone within 583 feet of Dobbins Landing in Presque Isle Bay, Erie, PA, on or around the last week of April. (*See* § 165.T2024–0294, 89 FR 27388*)*

ii. Village of Sodus Point Labor Day Fireworks, Sodus Point, NY: Circular safety zone extending 560 feet around Sodus Point Beach Park in Sodus Bay, Sodus Point, NY on or around the first weekend in September. (*see* § 165.T09–0718, 82 FR 40070)

iii. Light the Night at Canalside, Buffalo, NY: Circular safety zone extending 350 feet from the end of the pier at Wilkeson Pointe in Buffalo River, Buffalo, NY, on or around the first weekend in October. (*see* § 165.T09–0765, 88 FR 66686)

iv. City of Oswego Tree Lighting Display, Oswego, NY: Circular safety zone extending 210 feet around a pedestrian walkway over the Oswego River in Oswego, NY, on or around the fourth weekend in November. (*see* § 165.T09–0865,
88 FR 80589)

v. City of North Tonawanda NYE Fireworks, North Tonawanda, NY: Circular safety zone extending 105 feet from a pedestrian bridge over the Erie Canal in North Tonawanda, NY, on or around the last night in December. *(see* § 165.T09–0986, 88 FR 89576)

vi. Tri CLE Rock Roll Run, Cleveland, OH: Rectangular safety zone on Lake Erie encompassing a race area, immediately adjacent to Edgewater Beach, on or around the 2nd weekend of August. (*see* § 165.T09–17714, 89 FR 65203)

C. Events with proposed name changes in 33 CFR 165.939.

i. 33 CFR 165.939(a)(23) pka. Salute to Our Heroes; event name changed to NYSOPRHP Patriotic-Themed Fireworks Display, Hamlin, NY

ii. 33 CFR 165.939(b)(3) pka. High Speed Boat Races; event name changed to Eastlake Willoughby Grand Prix

iii. 33 CFR 165.939(b)(4) pka. Downtown Cleveland Alliance July 4th Fireworks; event name changed to City of Cleveland July 4th Fireworks

iv. 33 CFR 165.939(b)(6) pka. Parade of Lights; event name changed to Whiskey Island Boat Club Parade of Lights

v. 33 CFR 165.939(b)(8) pka. Conneaut Festival; event name changed to Conneaut Red, White, and Boom Over Lake Erie

vi. 33 CFR 165.939(b)(12) pka. Lake Erie Open Water Swim; Event name changed to Brogan Open Water Classic

D. Events proposed for removal from 33 CFR 100.901. This document is also removing several entries from the table in 33 CFR 100.901 where the categorization of the event or safety zones prescribed are no longer appropriate. Those events are addressed below:

i. Fireworks by Grucci, Oswego, NY, currently 33 CFR 100.901, Table 1 (1)

Flagship International Offshore Challenge, Erie, PA, currently 33 CFR 100.901, Table 1 (3)

ii. Friendship Festival Airshow, Buffalo, NY, currently 33 CFR 100.901, Table 1 (4)

iii. NFBRA Red Dog Kilo Time Trials, Tonawanda, NY, currently 33 CFR 100.901, Table 1 (5)

iv. Sodus Bay 4th of July Fireworks, Sodus Point, NY, currently 33 CFR 100.901, Table 1 (6)

v. Tall Ships Erie, Erie, PA, currently 33 CFR 100.901, Table 1 (7)

vi. Thomas Graves Memorial Fireworks Display, Port Bay, NY, currently 33 CFR 100.901, Table 1 (8)

vii. Thunder Island Offshore Challenge, Oswego, NY, currently 33 CFR 100.901, Table 1 (9)

viii. We Love Erie Days Fireworks, Erie, PA, currently 33 CFR 100.901, Table 1 (10)

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of each respective event. Each event establishes temporary safety/security zones or special local regulations lasting a short period of time over a small geographic area.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves two separate table revisions that contain special regulated areas and safety zones lasting various times which prohibit entry within defined areas. All additions, removals, and existing items in the aforementioned tables have been previously categorically excluded. Normally such actions are categorically excluded from further review under paragraph L60(a) and L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We

seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0879 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects

33 CFR Part 100

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

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR parts 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. In § 100.901, revise and republish Table 1 to read as follows:

TABLE 1 TO § 100.901

Event	Location [1]	Date [2]
Sector Eastern Great Lakes, NY		
(1) Flagship International Kilo Speed Challenge. *Sponsor:* Presque Isle Powerboat Racing Association.	That portion of Lake Erie, Presque Isle Bay, south of a line drawn from 42°08′54″ N 080°05′42″ W; to 42°07′ N 080°21′ W will be a regulated area. That portion of Lake Erie, Presque Isle Bay, north of a line drawn from 42°08′54″ N 080°05′42″ W; to 42°07′ N 080°21′ W will be a ''caution area''. All vessels transiting the caution area will be operated at bare steerageway, keeping the vessel's wake at a minimum, and will exercise a high degree of caution in the area. The bay entrance will not be affected.	On or around the 3rd or 4th weekend of June.
(2) Christmas in July *Sponsor:* Henderson Business and Community Council.	The special local regulation area will cover ALL WATERS WITHIN A MOVING ZONE THAT ENCOMPASSES A 50 yard BUFFER ZONE ahead of the lead vessel, 50 yards astern of the last participating vessel, and 50 yards on each side of the parade vessels as it travels the parade route in the Henderson Bay, starting at point 43°51′44″ N 76°12′07.3″ W and running north adjacent to the shore to point 43°52′12.2″ N 76°11′32.7″ W, continuing northwest to point 43°53′40.9″ N 76°12′40.6″ W and running south adjacent to the shore to point 43°51′47.2″ N 76°14′08.3″ W, ending at the starting position at point 43°51′44.0″ N 76°12′07.3″ W. Latitude Longitude 43°51′44″ N 076°12′07.3″ W, thence to 43°52′12.2″ N 076°11′32.7″ W, thence to 43°53′40.9″ N 076°14′08.3″ W, thence along the shoreline to end at the starting position.	On or around the final weekend of July.
(3) Henderson Harbor Sprint Triathlon *Sponsor:* Henderson Business and Community Council.	The special local regulation would cover navigable waters within Henderson Bay starting at point 43°51′02.5″ N 076°12′21.9″ W and running northeast adjacent to the shore to point 43°51′05.9″ N 076°12′12.2″ W, continuing west to point 43°51′06.2″ N 076°12′21.2″ W, ending at starting position at point 43°51′02.5″ N 076°12′21.9″ W.	On or around the 2nd weekend of July.
(4) Event Name: Women Swimmin' for Hospicare. *Sponsor:* Hospicare Palliative Care Services.	The special local regulation would cover the navigable waters within Cayuga Lake described below. *Regulated area:* Latitude Longitude 42°30′07.01″ N 076°30′57.04″ W Along shoreline to position: 42°30′30.03″ N 076°31′09.34″ W thence to 42°29′50.20″ N 076°32′24.99″ W Along shoreline to position: 42°29′34.71″ N 076°32′17.11″ W thence	On or around the 2nd Saturday of August.

TABLE 1 TO § 100.901—Continued

Event	Location [1]	Date [2]
	To starting position.	
Sector Northern Great Lakes, MI		
(1) Bridgefest Regatta ..... *Sponsor:* Bridgefest Committee.	Keweenaw Waterway, from the Houghton Hancock Lift Bridge to 1000 yards west of the bridge, near Houghton, MI.	2nd weekend of June.
(2) Duluth Fourth Fest Fireworks ..... *Sponsor:* Office of the Mayor, Duluth, MN.	That portion of the Duluth Harbor Basin Northern Section bounded on the south by a line drawn on a bearing of 087° true from the Cargill Pier through Duluth Basin Lighted Buoy #5 (LLNR 15905) to the opposite shore on the north by the Duluth Aerial Bridge. That portion of Duluth Harbor Basin Northern Section within 600 yards of position 46°46′47″ N 092°06′10″ W.	4th of July weekend.
(3) July 4th Fireworks ..... *Sponsor:* City of Sault Ste Marie, MI.	That portion of the St. Mary's River, Sault Ste. Marie, MI within a 1000-foot radius of Brady Park, located on the south shore of the river. These waters are enclosed by the Locks to the west and to the east from a line drawn from the pier light of the east center pier to the U.S. Coast Guard Base to the southeast.	4th of July weekend.

[1] All coordinates listed in Table 1 to part 100.901 reference North American Datum of 1983 (NAD 1983).
[2] As noted in the introductory text of this section, the enforcement dates and times for each of the listed events in this table are subject to change. In the event of a change, or for enforcement periods listed that do not allow a specific date or dates to be determined, the Captain of the Port will provide notice to the public by publishing a Notice of Enforcement in the FEDERAL REGISTER, as well as, issuing a Broadcast Notice to Mariner.

PART 165—Regulated Navigation Areas and Limited Access Areas

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

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

■ 4. In § 165.939, revise and republish the Table to read as follows:

TABLE 1 TO § 165.939

Event	Location [1] [2]	Date [3]
(a) January Safety Zones		
[Reserved].		
(b) February Safety Zones		
[Reserved].		
(c) March Safety Zones		
[Reserved].		
(d) April Safety Zones		
(1) United Refining Company of Pennsylvania Fireworks.	Erie, PA. All waters of the Presque Isle Bay, from surface to bottom, encompassed by a 583-foot radius around the Dobbins Landing Launch site at 42°08′19.87″ N, 80°05′29.54″ W in Erie, PA.	On or around the last week in April.
(e) May Safety Zones		
[Reserved].		
(f) June Safety Zones		
(1) Festival of the Fish	Vermilion, OH. All U.S. waters of Lake Erie within a 420-foot radius of the fireworks launch site located at position 41°25′45″ N and 082°21′54″ W, (NAD 83).	On or around the 3rd Saturday in June.
(2) City of Syracuse Fireworks Celebration.	Syracuse, NY. All U.S. waters of Onondaga Lake within a 350-foot radius of land position 43°03′37.0″ N, 076°09′59.0″ W in Syracuse, NY.	On or around the last weekend of June.
(3) Rochester Harbor and Carousel Festival.	Rochester, NY. All U.S. waters of Lake Ontario within a 1,120-foot radius of land position 43°15′40.2″ N, 077°36′05.1″ W in Rochester, NY.	On or around the 4th Monday of June.
(4) Seneca River Days	Baldwinsville, NY. All U.S. waters of the Seneca River within an 840-foot radius of land position 43°09′25.0″ N, 076°20′21.0″ W in Baldwinsville, NY.	On or around the 2nd weekend of June.
(5) Flagship Niagara Mariner's Ball Fireworks.	Erie, PA. All waters of Presque Isle Bay, Erie, PA within a 350-foot radius from the Dobbins Landing launch site located at position 42°08′21.79″ N, 080°05′15.89″ W.	On or around the 1st weekend in June.

TABLE 1 TO § 165.939—Continued

Event	Location [1 2]	Date [3]
(6) Hope Chest Buffalo Niagara Dragon Boat Festival.	Buffalo, NY. All waters of the Buffalo River, Buffalo, NY starting at position 42°52′12.0″ N, 078°52′17.0″ W then Southeast to 42°52′03.0″ N, 078°52′12.0″ W then East to 42°52′03.0″ N, 078°52′10.0″ W then Northwest to 42°52′13.0″ N, 078°52′16.0″ W and then returning to the point of origin.	On or around the 3rd weekend in June.
(7) Blazing Paddles	Cleveland, OH. All waters of the Cuyahoga River in Cleveland OH, beginning at position 41°29′36″ N, 081°42′13″ W to the turnaround point at position 41°27′53″ N,081°40′38″ W.	On or around the 3rd weekend of June.
(8) Boaters Against Cancer Fireworks.	Kendall, NY. All waters of Lake Ontario contained within a 210-foot radius of the fireworks launch site located at 43°22′02.04″ N, 078°01′48.06″ W in Kendall, NY.	On or around the last weekend of June.
(9) NYSOPRHP Patriotic-Themed Fireworks Display.	Varying event names. Hamlin, NY. All waters of Lake Ontario, from surface to bottom, encompassed by a 1000-foot radius around 43°21′51.9″ N, 077°56′59.6″ W.	On or around the last weekend of June or first weekend in July.
(g) July Safety Zones		
(1) Cleveland Triathlon	Cleveland, OH. All U.S. waters of Lake Erie at North Coast Harbor, Cleveland, OH within 100 feet of a line starting at position 41°30′34.6″ N and 081°41′51.3″ W extending in a straight line to the East Basin Break wall at position 41°30′51.8″ N and 081°42′08.5″ W.	On or around the 4th or 5th Sunday in July.
(2) Riverfest Fireworks Display.	Cleveland, OH. All U.S. waters of Lake Erie, Cleveland, OH within a 280-foot radius from position 41°30′34.23″ N and 081°08′55.73″ W.	On or around the 2nd or 3rd weekend in July.
(3) Eastlake Willoughby Grand Prix.	Fairport, OH. All U.S. waters of Lake Erie, off of Headlands Beach State Park, Fairport, OH inside an area starting on shore at position 41°44′33″ N, 081°19′14″ W extending NW in a straight line to position 41°45′00″ N, 081°19′35″ W, then NE in a straight line to position 41°45′59″ N, 081°17′30″ W, and SE back to the shore at position 41°45′43″ N, 081°17′08″ W.	On or around the 3rd weekend in July.
(4) City of Cleveland July 4th Fireworks.	Cleveland, OH. All U.S. waters of Lake Erie and Cleveland Harbor within a 1,000-foot radius of land position 41°30′10″ N, 081°42′36″ W (NAD 83) at Dock 20.	On or around the 4th of July.
(5) Mentor Harbor Yacht Club Fireworks.	Mentor, OH. All U.S. waters of Lake Erie and Mentor Harbor within a 700-foot radius of land position 41°43′36″ N, 081°21′09″ W.	On or around the 4th of July.
(6) Whiskey Island Boat Club Parade of Lights.	Cleveland, OH. All U.S. waters within 25 feet of the vessels participating in the Cleveland Parade of Lights in the Cuyahoga River. The safety zone will move with participating vessels as they transit from the mouth of the Cuyahoga River in the vicinity of position 41°29′59″ N, 081°43′31″ W, to Merwin's Wharf in the vicinity of 41°29′23″ N, 081°42′16″ W, and returning to the mouth of the Old River at 41°29′55″ N, 081°42′18″ W.	On or around the 3rd or 4th weekend in July.
(7) Lorain Independence Day Celebration.	Lorain, OH. All U.S. waters within a 700-foot radius of the fireworks launch site in Lake Wilhelm located at position 41°28′35.42″ N and 082°10′51.28″ W.	On or around the 4th of July.
(8) Conneaut Red, White, and Boom Over Lake Erie.	Conneaut, OH. All U.S. waters within a 570-foot radius of the fireworks launch site located in Conneaut Harbor, at position 41°58′00.43″ N and 080°33′34.93″ W.	On or around the 4th of July.
(9) Fairport Harbor Mardi Gras.	Fairport, OH. All U.S. waters within a 275-foot radius of the fireworks launch site located in Fairport Harbor, at position 41°45′29.55″ N and 081°16′19.97″ W.	On or around the 4th of July.
(10) Sheffield Lake Community Days.	Sheffield Lake, OH. All U.S. waters of Lake Erie and Sheffield Lake Boat ramp within a 350-foot radius of land position 41°29′27.65″ N, 082°6′47.71″ W.	On or around the 2nd weekend in July.
(11) Bay Village Independence Day Celebration.	Bay Village, OH. All U.S. waters within a 560-foot radius of the fireworks launch site located in Lake Erie, at position 41°29′23.9″ N and 081°55′44.5″ W.	On or around the 4th of July.

TABLE 1 TO § 165.939—Continued

Event	Location [1] [2]	Date [3]
(12) Brogan Open Water Classic.	Cleveland, OH. All U.S. waters of Lake Erie, south of a line drawn between positions 41°29′30″ N, 081°44′21″ W and 41°29′21″ N, 081°45′04″ W to the shore.	On or around the 2nd or 3rd weekend in July.
(13) Boldt Castle 4th of July Fireworks.	Heart Island, NY. All U.S. waters of the Saint Lawrence River within a 1,120-foot radius of land position 44°20′38.5″ N, 075°55′19.1″ W at Heart Island, NY.	On or around the 4th of July.
(14) Clayton Chamber of Commerce Fireworks.	Calumet Island, NY. All U.S. waters of the Saint Lawrence River within an 840-foot radius of land position 44°15′04.0″ N, 076°05′40″ W at Calumet Island, NY.	On or around the 4th of July.
(15) French Festival Fireworks.	Cape Vincent, NY. All U.S. waters of the Saint Lawrence River within an 840-foot radius of land position 44°07′54.6.0″ N, 076°20′01.3″ W in Cape Vincent, NY.	On or around the 2nd weekend of July.
(16) Lyme Community Days	Chaumont, NY. All U.S. waters of Chaumont Bay within a 560-foot radius of land position 44°04′06.3″ N, 076°08′56.8″ W in Chaumont, NY.	On or around the 4th weekend of July.
(17) Village Fireworks	Sackets Harbor, NY. All U.S. waters of Black River Bay within an 840-foot radius of land position 43°56′51.9″ N, 076°07′46.9″ W in Sackets Harbor, NY.	On or around the 4th of July.
(18) Can-Am Festival	Sackets Harbor, NY. All U.S. waters of Black River Bay within a 1,120-foot radius of land position 43°57′15.9″ N, 076°06′39.2″ W in Sackets Harbor, NY.	On or around the 3rd weekend of July.
(19) Fort Brewerton Greater Oneida Lake Chamber of Commerce Fireworks.	Brewerton, NY. All U.S. waters of Lake Oneida within an 840-foot radius of the barge at position 43°14′16.4″ N, 076°08′03.6″ W in Brewerton, NY.	On or around the 4th of July.
(20) Celebrate Baldwinsville Fireworks.	Baldwinsville, NY. All U.S. waters of the Seneca River within a 700-foot radius of land position 43°09′24.9″ N, 076°20′18.9″ W in Baldwinsville, NY.	On or around the 1st weekend of July.
(21) Island Festival Fireworks.	Baldwinsville, NY. All U.S. waters of the Seneca River within a 1,120-foot radius of land position 43°09′22.0″ N, 076°20′15.0″ W in Baldwinsville, NY.	On or around the 1st weekend of July.
(22) Village of Sodus Point Fourth of July Fireworks.	Sodus Point, NY. All U.S. waters of Sodus Bay within a 1,120-foot radius of land position 43°16′33″ N, 076°58′27″ W in Sodus Point, NY.	On or around the 4th of July.
(23) Olcott Fireworks	Olcott, NY. All U.S. waters of Lake Ontario within a 1,120-foot radius of land position 43°20′23.6″ N, 078°43′09.5″ W in Olcott, NY.	On or around the 4th of July.
(24) North Tonawanda Fireworks.	North Tonawanda, NY. All U.S. waters of the East Niagara River within a 1,400-foot radius of land position 43°00′56.3″ N, 078°53′38.6″ W in North Tonawanda, NY.	On or around the 4th of July.
(25) Tonawanda's Canal Fest Fireworks.	Tonawanda, NY. All U.S. waters of the East Niagara River within a 210-foot radius of land position 43°01′17.8″ N, 078°52′40.9″ W in Tonawanda, NY.	On or around the 4th Sunday of July.
(26) Tom Graves Memorial Fireworks.	Port Bay, NY. All waters of Port Bay, NY, within an 840-foot radius of the barge located in position 43°17′52.4″ N, 076°49′55.7″ W in Port Bay, NY.	On or around the 4th of July.
(27) Oswego Harborfest	Oswego, NY. All waters of Oswego Harbor, Oswego, NY contained within a 700-foot radius of position 43°28′06.9″ N, 076°31′08.1″ W along with a 350-foot radius of the breakwall between positions 43°27′53.0″ N, 076°31′25.3″ W then Northeast to 43°27′58.6″ N, 076°31′12.1″ W.	On or around the last week of July.
(28) City of Oswego, NY 4th of July Display.	Oswego, NY. All waters of Lake Ontario, Oswego, NY within a 490-foot radius from the launch site located at position 43°27′55.8″ N, 076°30′59.0″ W.	On or around the 4th of July.
(29) Wine and Walleye Festival Fireworks.	Ashtabula, OH. All waters of Lake Erie within a 280-foot radius of the fireworks launch site located at position 41°54′06″ N, 080°47′49″ W, Ashtabula, OH.	On or around the last weekend of July.
(30) City of Erie 4th of July Fireworks.	Erie, PA. All waters of Lake Erie contained within a 280-foot radius of the Dobbins Landing launch site located at 42°08′17.13″ N, 080°05′30.17″ W in Erie, PA.	On or around the 4th of July.
(31) Buffalo Italian Fest	Buffalo, NY. All waters of Lake Erie contained within a 420-foot radius of 42°52′04.23″ N, 078°53′00.67″ W in Buffalo, NY.	On or around 2nd or 3rd weekend of July.
(32) Hamburg Beach Blast ..	Hamburg, NY. All waters of Lake Erie contained within a 280-foot radius of 42°45′59.21″ N, 078°52′41.51″ W in Hamburg, NY.	On or around the last weekend of July.

TABLE 1 TO § 165.939—Continued

Event	Location [1 2]	Date [3]
(33) Christmas in July Fireworks.	Henderson Harbor, NY. All waters within a 420-foot radius of the barge at position 43°86′66″ N, 076°20′97″ W in Henderson Harbor, NY.	On or around the last weekend of July.
(34) SamSen Operation/ Seneca Lake Resorts 4th of July.	Romulus, NY. All waters of the Seneca Lake, contained in a 420-foot radius of 42°43′39.28″ N, 076°54′59.47″ W in Romulus, NY.	On or around the 4th of July.
(35) Town of Newfane Annual Fireworks Show.	Olcott, NY. All waters of Lake Ontario within a 1,120-foot radius of land position 43°20′23.6″ N, 078°43′09.5″ W in Olcott, NY.	On or around the 4th of July.
(h) August Safety Zones		
(1) Whiskey Island Paddlefest.	Cleveland, OH. All U.S. waters of Lake Erie; Cleveland Harbor, from 41°29′59.5″ N and 081°42′59.3″ W to 41°30′4.4″ N and 081°42′44.5″ W to 41°30′17.3″ N and 081°43′0.6″ W to 41°30′9.4″ N and 081°43′2.0″ W to 41°29′54.9″ N and 081°43′34.4″ W to 41°30′0.1″ N and 081°43′3.1″ W and back to 41°29′59.5″ N and 081°42′59.3″ W (NAD 83).	On or around the 3rd or 4th weekend in August.
(2) D-Day Conneaut	Conneaut, OH. All U.S. waters of Conneaut Township Park, Lake Erie, within an area starting at 41°57.71′ N, 080°34.18′ W, to 41°58.36′ N, 080°34.17′ W, then to 41°58.53′ N, 080°33.55′ W, to 41°58.03′ N, 080°33.72′ W (NAD 83), and returning to the point of origin.	On or around the 3rd weekend in August.
(3) Celebrate Erie Fireworks	Erie, PA. All U.S. waters of Presque Isle Bay within an 800-foot radius of the Dobbins Landing launch site, at 42°08′19.0″ N, 080°05′29.0″ W in Erie, PA.	On or around the 3rd weekend of August.
(4) Thunder on the Niagara Hydroplane Boat Races.	North Tonawanda, NY. All U.S. waters of the Niagara River near the North Grand Island Bridge, encompassed by a line starting at 43°03′32.9″ N, 078°54′46.9″ W to 43°03′14.6″ N, 078°55′16.0″ W then to 43°02′39.7″ N, 078°54′13.1″ W then to 43°02′59.9″ N, 078°53′42.0″ W and returning to the point of origin.	On or around the last weekend in July to the 2nd weekend of August.
(5) Ski Show Sylvan Beach	Sylvan Beach, NY. All waters where Fish Creek meets Oneida Lake starting at position 43°11′36.6″ N, 75°43′53.8″ W then South to 43°11′33.7″ N, 75°43′51.2″ W then East to 43°11′42.4″ N, 75°43′38.6″ W then North to 43°11′44.5″ N, 75°43′39.7″ W then returning to the point of origin.	On or around the 2nd or 3rd weekend of August.
(6) Great Lakes Offshore Grand Prix.	Dunkirk, NY. All waters of Lake Erie starting at position 42°29′37.7″ N, 079°21′17.7″ W then Northwest to 42°29′45.2″ N, 079°21′28.2″ W then Northeast to 42°30′15.0″ N, 079°21′20.0″ W then Northeast to 42°30′39.0″ N, 079°19′46.0″ W then Southeast to 42°30′09.3″ N, 079°19′03.1″ W.	On or around the 2nd or 3rd weekend of August.
(7) County Commissioners Association of Pennsylvania Fireworks.	Erie, PA. All waters of Presque Isle Bay, from surface to bottom, encompassed by 350-foot radius around the Dobbins Landing Launch site, at 42°8′19.6008″ N 80°5′29.2806″ W.	On or around the 1st or 2nd week of August.
(8) Tri CLE Rock Roll Run ...	Cleveland, OH. All U.S. waters of Lake Erie offshore Edgewater Beach and immediately adjacent waters within to following approximate safety zone rectangle: (1) 41°29′15.76″ N, 081°44′46.34″ W; (2) 41°29′27.96″ N, 081°44′49.87″ W; (3) 41°29′31.98″ N, 081°44′24.01″ W, (4) 41°29′27.46″ N, 081°44′22.51″ W.	On or around the 2nd weekend of August.
(i) September Safety Zones		
(1) Madison Light Up the Park.	Madison Township, OH. All U.S. waters of Lake Erie, within a 210 ft radius of position 41°50′17″ N and 081°02′51″ W (NAD 83).	The 1st weekend in September.
(2) Cleveland National Airshow.	Cleveland, OH. All U.S. waters of Lake Erie and Cleveland Harbor (near Burke Lakefront Airport) from position 41°30′20″ N and 081°42′20″ W to 41°30′50″ N and 081°42′49″ W, to 41°32′09″ N and 081°39′49″ W, to 41°31′53″ N and 081°39′24″ W, then return to the original position (NAD 83).	The Wednesday before Labor Day through Labor Day.

TABLE 1 TO § 165.939—Continued

Event	Location [1] [2]	Date [3]
(3) Head of the Cuyahoga ...	Cleveland, OH. All U.S. waters of the Cuyahoga River, between a line drawn perpendicular to the river banks from position 41°29′55″ N, 081°42′23″ W (NAD 83) just past the Detroit-Superior Viaduct bridge at MM 1.42 of the Cuyahoga River south to a line drawn perpendicular to the river banks at position 41°28′32″ N, 081°40′16″ W (NAD 83) just south of the Interstate 490 bridge at MM 4.79 of the Cuyahoga River.	The 3rd weekend in September.
(4) Village of Sodus Point Labor Day Fireworks.	Sodus Point, NY. All waters of Lake Ontario, from surface to bottom, encompassed by a 560-foot radius around 43°16′33″ N 076°58′27″ W in Sodus Point, NY.	On or around the 1st weekend of September.
(j) October Safety Zones		
(1) Light the Night at Canalside.	Buffalo, NY. All waters of Lake Erie, from surface to bottom, encompassed by 350-foot radius around 42°52′07.96″ N 78°53′00.87″ W.	On or around the 1st weekend of October.
(k) November Safety Zones		
(1) City of Oswego Tree Lighting Display.	Oswego, NY. All waters of the Oswego River, from surface to bottom, encompassed by a 210-foot radius around 43°27′15.18″ N, 76°30′27.89″ W.	On or around the 4th weekend in November.
(l) December Safety Zones		
(1) City of North Tonawanda NYE Fireworks.	North Tonawanda, NY. All waters of the Erie Canal, from surface to bottom, encompassed by a 105-foot radius around 43°01′17.96″ N 78°52′41.04″ W.	On or around the last night in December.

[1] All geographic coordinates in Table 1 to § 165.939 are North American Datum of 1983 (NAD 83).
[2] Location and zone size subject to change. Exact location and size will be posted in Notice of Enforcement and Local Notice to Mariners.
[3] Date subject to change. Exact date will be posted in Notice of Enforcement and Local Notice to Mariners.

Dated: January 8, 2025.

M.I. Kuperman,

Captain, U.S. Coast Guard, Captain of the Port Sector Eastern Great Lakes.

[FR Doc. 2025–00693 Filed 1–17–25; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2024–OSERS–0138]

Rehabilitation Long-Term Training Program

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Proposed priorities and requirements.

SUMMARY: The Department of Education (Department) proposes priorities and requirements under the Rehabilitation Long-Term Training (RLTT) program with a focus on the Comprehensive System of Personnel Development (CSPD) and six rehabilitation topic areas. The Department may use these priorities and requirements for competitions in fiscal year (FY) 2025 and later years. This action is intended to address the national needs for the RLTT program, particularly the retention of qualified vocational rehabilitation (VR) personnel in the field of State VR services and the training of RSA scholars who aspire to become VR professionals and will fill critical VR positions where there are shortages.

DATES: We must receive your comments on or before February 20, 2025.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *www.regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *www.regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or after the comment period closes. To ensure the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''

Note: The Department's policy is generally to make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to only include information in their comments that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Diandrea Bailey, U.S. Department of Education, 400 Maryland Avenue SW, room 4A10, Washington, DC 20202. Telephone: (202) 987–0126. Email: *84.129@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities and requirements. To ensure that your comments have maximum effect in developing the final priorities and requirements, we urge

you to clearly identify the specific section of the proposed priorities and requirements that each comment addresses.

We are particularly interested in comments about whether the proposed priorities or requirements would be challenging for new applicants to meet and, if so, how the proposed priorities or requirements could be revised to address potential challenges.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from these proposed priorities and requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect public comments about the proposed priorities and requirements, by accessing *Regulations.gov.* To inspect comments in person, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities and requirements. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the RLTT program is to provide financial assistance for academic training in areas of personnel shortages identified by the Secretary and published in a notice in the **Federal Register**. RLTT funds are awarded to colleges and universities. Grantees must award at least 65 percent of project funds as scholarships (*i.e.,* awards of financial assistance, including disbursements or credits for student stipends, tuition and fees, books and supplies, and student travel in conjunction with training assignments) to students (herein referred to as RSA scholars) enrolled in the RLTT program.

Assistance Listing Number: 84.129.

Program Authority: 29 U.S.C. 772.

Applicable Regulations: 34 CFR parts 385 and 386.

Proposed Priorities: This document contains two proposed priorities. The Department may use one or both priorities for the FY 2025 RLTT program competitions and for any subsequent competitions.

Proposed Priority 1: RLTT Program for State VR Agencies' CSPD: Master's Degree or Certificate, Assistance Listing Number (ALN) 84.129W.

Background: The Department published a Notice of Final Priority in the **Federal Register** on July 23, 2014, establishing a priority for nine rehabilitation specialty areas of national need, including CSPD. Subsequently, RSA awarded eight CSPD grants to institutions of higher education (IHEs) in FY 2015 with a focus on providing academic training leading to a master's degree or academic certificate that supported State agency VR counselors. Grants were funded for a five-year cycle and expired in FY 2020. RSA has not awarded CSPD grants since FY 2015 as the national need for CSPDs was not the primary priority. Additionally, the RSA discretionary Rehabilitation Training-State Vocational Rehabilitation Unit In-Service Training program that supported special projects to train state vocational rehabilitation unit personnel was no longer available in 2015 (as a result of the amendments to the Rehabilitation Act made by the Workforce Innovation and Opportunity Act). As such, there remains a need to provide continuing education to rehabilitation professionals and paraprofessionals within the designated State unit, particularly with respect to rehabilitation technology so that they can establish and maintain education and experience requirements, to ensure that the personnel have a 21st century understanding of the evolving labor force and the needs of individuals with disabilities as mandated by the Rehabilitation Act. This continuing education is also important for rehabilitation professionals and paraprofessionals to meet the current challenges facing State VR agencies and related agencies in assisting individuals with disabilities to achieve high-quality competitive integrated employment outcomes.

Under Proposed Priority 1, applicants must propose a CSPD project that provides training to currently employed State VR agency personnel, including VR counselors with disabilities and VR counselors from racially and ethnically diverse backgrounds.

The academic training for all participants must meet (A) the designated State unit (DSU) personnel standards required under section 101(a)(7) of the Rehabilitation Act of 1973, as amended, and 34 CFR 361.18 and (B) the qualifications for the master's degree or academic certificate specified in the State's CSPD plans or of the States with which the State VR counselors and other personnel are working.

CSPD proposed projects must develop and use innovative approaches to train VR professionals, including using cutting-edge technology or innovative applications of advanced technology (*e.g.,* hybrid learning and competency-based programs) to maximize participation in, and improve the effectiveness of, the academic training.

Proposed Priority 2: RLTT Program for Rehabilitation Topic Areas, ALNs 84.129B, 84.129E, 84.129H, 84.129L, 84.129P, and 84.129Q.

Background: The goal of this priority is to increase the number of RSA scholars, and upgrade the skills of qualified VR personnel, especially rehabilitation counselors, who are trained in providing VR and related services to assist individuals with disabilities to achieve competitive integrated employment through academic training in six rehabilitation topic areas. Upon successful completion of their program of study, RSA scholars will be prepared to effectively meet the needs and demands of consumers with disabilities, especially individuals with significant disabilities, and employers.

Proposed Priority:

Under the Proposed Priority 2, applicants must propose a project that provides academic training to RSA scholars where the training leads to a degree (undergraduate or master's level) or academic certificate in one of six rehabilitation topic areas that follow:

1. Vocational Rehabilitation (VR) Counseling: Master's Degree (ALN 84.129B). Projects in this topic area must be designed to support RSA scholars interested in pursuing a master's degree in VR counseling. Projects must increase the skills of RSA scholars so that they are, upon successful completion of their program of study, prepared to, effectively and with an advanced level of expertise, help individuals with disabilities (consumers) meet their career and personal goals and help employers in their hiring efforts. Projects should also increase RSA scholars understanding of and ability to support consumers access to pre-employment transition services.

2. Rehabilitation Technology (ALN 84.129E). Projects in this topic area must provide scholarships to RSA scholars to pursue a degree or certificate in the application of advanced technology in rehabilitation services, and for use in careers in rehabilitation technology. Rehabilitation technology training includes training on the use, applications, and benefits of technology (including assistive technology and

artificial intelligence tools) to individuals with disabilities to achieve and/or maintain competitive integrated employment and independence.

The rehabilitation technology training program must be designed to ensure that RSA scholars acquire a 21st-century understanding of the evolving technology labor force, the needs of individuals with disabilities that might be addressed via technology, and the ways technology can unlock individuals' strengths.

3. Rehabilitation of Individuals With Mental Health Disorders or Illnesses (ALN 84.129H). Projects in this topic area must be designed to support RSA scholars interested in pursuing a degree or certificate for careers that provide specialized services to individuals who have mental health disorders or illnesses and are participants in the State VR programs. Additionally, projects must be designed to prepare RSA scholars to address a range of issues in VR services for individuals with mental health disorders or illnesses to assist them to achieve and maintain competitive integrated employment. Such mental health disorders and illnesses might include mood disorders (*e.g.,* depressive disorders and bipolar disorders), suicidality, schizophrenia, eating disorders, post-traumatic stress disorder, and other mild to severe mental health disorders. This can include mental health issues related to long-term effects of post-acute infection syndromes (COVID–19 and myalgic encephalomyelitis/chronic fatigue syndrome (ME/CFS) for which mental health care may be part of treating a potentially more systematic illness.

4. Undergraduate Education in the Rehabilitation Services (ALN 84.129L). Projects in this topic area must train undergraduate RSA scholars interested in pursuing careers as rehabilitation generalists, VR paraprofessionals, or other entry-level positions in the public VR services. Projects must also be designed to provide training and clinical learning experiences to equip RSA scholars with foundational knowledge of disability conditions, VR processes, interviewing techniques, and other skills required for working with consumers in the public VR services, including the skills to coordinate the diagnosis and evaluation of a person's disabling condition, create individual plans, arrange various VR services, assist VR counselors in working with persons with disabilities in selecting a vocational goal, provide personal and social adjustment services, conduct job placement activities, and provide follow-up services to individuals after other services are completed. Pre-employment transition services should be included as part of programmatic content.

5. Rehabilitation of Individuals Who Are Blind or Have Low Vision (ALN 84.129P). Projects in this topic area must train RSA scholars interested in pursuing a degree or certificate for careers in providing specialized services to persons who are blind or have low vision. Projects must be designed to provide training and hands-on experiences in VR services for persons who are blind or have low vision to assist them to achieve and/or maintain competitive integrated employment, including training in orientation and mobility, methods of independent and safe travel, and application of advanced technology.

6. Rehabilitation of Individuals Who Are Deaf or Hard of Hearing (ALN 84.129Q). Projects in this topic area must train RSA scholars interested in pursuing a degree or certificate for careers in providing specialized rehabilitation to persons who are deaf or hard of hearing. The training must include opportunities for RSA scholars to acquire the necessary skills to communicate effectively with individuals who are deaf or hard of hearing, and to assess and address the communication needs of individuals who are deaf or hard of hearing. Additionally, projects must have plans to support RSA scholars in developing competency in sign language/ASL and other communication methods as well as familiarity with the use of various assistive listening devices and application of other advanced assistive technology.

Projects must provide assistance to scholars to secure or maintain employment with State VR agencies, where the job duties include provision of rehabilitation of individuals who are deaf or hard of hearing (*e.g.,* assessment services, vocational and adjustment counseling services, provision of independent living skills training, interpreting services, interpreter referral services, advocacy services, and job placement services).

The academic training for all participants must meet (A) the DSU) personnel standards required under section 101(a)(7) of the Rehabilitation Act of 1973, as amended, and 34 CFR 361.18.

Rehabilitation topic area projects under this proposed priority must develop and use innovative approaches to train RSA scholars, including using cutting-edge technology or innovative application of advanced technology (*e.g.,* hybrid learning or competency-based programs) to maximize participation in, and improve the effectiveness of, the academic training.

In addition to academic training, RSA funded projects may provide a one-time stipend, to an amount as specified in the Notice Inviting Applications published in the **Federal Register** to RSA scholars based on identified needs for—

(a) completing an internship (*e.g.,* room and board, travel);

(b) obtaining qualifying employment in the specific field of study within a period of time after graduating and maintaining qualifying employment a minimum period of time beyond the required service obligation period as specified in the NIA; and

(c) utilizing a vetted employment expert or consultant to assist the RSA scholar in securing employment within a period of time after graduating with a State VR or related agency in the field of study as specified in the NIA.

Proposed Requirements

The Department proposes the following requirements for the RLTT program. We may apply one or more of these requirements in any year in which this program is in effect. We propose these requirements because we believe they would help applicants to develop well-designed, comprehensive projects. The proposed requirements would also provide the Department information critical to grants monitoring, such as an up-to-date picture of the employment needs in the applicant's geographic area.

Application Requirements: All applicants must—

(a) Provide data on the current and projected employment needs and personnel shortages in State VR agencies and other related agencies (as defined in 34 CFR 386.4) in their local area, region, and State; and describe how the proposed project will address those employment needs and personnel shortages;

(b) Describe how the project will train RSA scholars, as applicable, including how the project will provide them with an understanding of the evolving labor force and the needs of individuals with disabilities to ensure that the RSA scholars have a 21st century understanding of the evolving labor force and the needs of individuals with disabilities. Applicants must describe how, upon completion of the training program, State VR personnel including VR counselors or RSA scholars will be prepared to assist individuals with disabilities to meet current demands and emerging trends in the labor market, including how—

(1) The program provides a breadth of knowledge, experience, and rigor that

will adequately prepare scholars to meet the employment needs and goals of VR consumers and aligns with evidence-based (as defined in 34 CFR 77.1) practices and with competency-based skills (*e.g.,* advanced counseling skills, critical thinking skills, and skills in building collaborative relationships);

(2) The program prepares RSA scholars to meet all applicable certification standards;

(3) The program addresses new or emerging consumer employment needs or trends at the national, State, and regional levels;

(4) The program trains RSA scholars to possess the skills needed to address the specialized needs of individuals with specific types of disability conditions and backgrounds, which may include, but are not limited to, physical disabilities, mental health disorders or illnesses, intellectual and developmental disabilities, blindness, and deaf or hard of hearing, and individuals with disabilities who are from diverse cultural backgrounds or historically underserved populations;

(5) The program trains RSA scholars to understand the applications and strategies related to the integration of advanced assistive technology and artificial intelligence tools to fuel competitive integrated employment in the 21st century for individuals with disabilities, recognize the assistive technology needs of consumers and employers who hire individuals with disabilities, throughout the rehabilitation process so that they will be better able to coordinate the provision of appropriate advanced assistive technology services and devices including artificial intelligence in order to assist the consumers to obtain and retain competitive integrated employment;

(6) The program teaches RSA scholars to work effectively with employers, including by teaching strategies for developing relationships with employers in their State and local areas, identifying employer needs and skill demands, making initial employer contacts, presenting job-ready clients to potential employers, and conducting follow-up with employers;

(7) The program teaches RSA scholars to work effectively with state education agencies (SEAs), and local educational agencies (LEAs), particularly special education systems and educators. This includes instruction on collaborating effectively with SEAs, LEAs, school administrators, and special education teachers to ensure their awareness of pre-employment transition services and vocational rehabilitation transition services, and ensuring the successful planning and provision of these services; and

(8) The latest technology is incorporated into the methods of instruction (*e.g.,* technology that supports the use of hybrid education to reach scholars who live far from the university and the use of technology to acquire labor market information);

(c) Describe their methods to—

(1) Recruit highly capable prospective State VR counselors or RSA scholars who have the potential to successfully complete the academic program, all required practicum and internship experiences, and the required service obligation;

(2) Educate potential RSA scholars about the terms and conditions of the service obligation under 34 CFR 386.4, 386.34, and 386.40 through 386.43 so that they will be fully informed before accepting a scholarship and aware of the consequences should they fail to complete the program;

(3) Maintain a system that ensures that RSA scholars sign a payback agreement when they start and an exit certification form when they exit the program, regardless of whether they drop out, are removed, or successfully complete the program;

(4) Provide academic support and counseling to RSA scholars throughout the course of the academic program to ensure successful completion;

(5) Ensure that all RSA scholars complete an internship in a State VR agency (as defined in 34 CFR 386.4) as a requirement for program completion, unless the Secretary determines upon grantee request that there is sufficient justification for not completing an internship;

(6) Provide career counseling, including informing RSA scholars of professional contacts and networks, job leads including those available through the RSA Payback Information Management System (PIMS), and other necessary resources and information to support RSA scholars in successfully obtaining and retaining qualifying employment;

(7) Maintain bi-monthly contact with RSA scholars upon successful academic training program completion and provide post-graduation support to assist RSA scholars to achieve qualifying employment as well as employment support, at a minimum, for the RSA scholars' initial three to six months of employment;

(8) Maintain quarterly communication with RSA scholars after program exit until the beginning of their service obligation date to ensure that scholar contact information in PIMS is up to date;

(9) Maintain and safeguard credentials to access PIMS for the timely review and approval of scholar employment; and

(10) Maintain accurate financial information on, while safeguarding the privacy of, current and former scholars from the time they are enrolled in the program until they successfully meet their service obligation;

(d) Describe a plan for developing and maintaining partnerships with State VR agencies, community-based rehabilitation service providers, and LEAs that includes—

(1) Coordination between the grantee and the State VR agencies and community-based rehabilitation service providers that will promote qualifying employment opportunities for RSA scholars and formalized on-boarding and induction experiences for new hires;

(2) Formal opportunities for RSA scholars to obtain work experiences through internships, practicum agreements, job shadowing, and mentoring opportunities;

(3) Formal opportunities for RSA scholars to obtain work experiences in LEAs to develop practical knowledge on effective special education teacher-VR counselor collaborations that foster increased awareness in LEAs of pre-employment transition services and vocational rehabilitation transition services, and the successful planning and provision of these services; and

(4) A scholar internship assessment tool that is developed to ensure a consistent approach to the evaluation of scholars in a particular program. Applicants must describe how—

(i) The tool will reflect the specific responsibilities of the scholar during the internship;

(ii) Grantees and worksite supervisors will work together to develop the assessment tool. Supervisors at the internship site will complete the assessment detailing the scholar's strengths and areas for improvement that must be addressed and provide the results of the assessment to the grantee; and

(iii) The grantee will ensure that (A) RSA scholars are provided with a copy of the assessment and all relevant rubrics prior to beginning their internship, (B) supervisors have sufficient technical support to accurately complete the assessment, and (C) scholars receive a copy of the results of the assessment within 90 days of the end of their internship;

(e) Describe how RSA scholars will be evaluated throughout the program to ensure that they are proficient in meeting the needs and demands of

consumers and employers, including the steps that will be taken to provide assistance to an RSA scholar who is not meeting academic standards or who is performing poorly in a practicum or internship setting;

(f) Describe how the program will be evaluated, including how—

(1) The program will determine its effectiveness over time in filling vacancies in the State VR agency with qualified counselors or rehabilitation professionals capable of providing quality services to consumers;

(2) Input from State VR agencies and community-based rehabilitation service providers will be included in the evaluation;

(3) Feedback from consumers of VR services and employers (including the assessments described in paragraph (d)(4)) will be included in the evaluation;

(4) Data on the State VR program from other sources, such as the Department, will be included in the evaluation; and

(5) The data and results from the evaluation will be used to make necessary adjustments and improvements to the program.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority and Requirements:

We will announce the final priorities and requirements in a document in the **Federal Register**. We will determine the final priorities and requirements after considering public comments on the proposed priorities and requirements and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, and selection criteria subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use these proposed priorities and requirements, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $200 million or more (adjusted every three years by the Administrator of Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866, as amended by Executive Order 14094. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' OIRA has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed priorities and requirements only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing''

require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priorities and requirements easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed priorities and requirements clearly stated?
- Do the proposed priorities and requirements contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed priorities and requirements (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed priorities and requirements be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed priorities and requirements in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed priority and requirements easier to understand? If so, how?
- What else could we do to make the proposed priorities and requirements easier to understand?

To send any comments about how the Department could make the proposed priorities and requirements easier to understand, see the instructions in the **ADDRESSES** section.

Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed priorities and requirements would not have a significant economic impact on a substantial number of small entities. The small entities that this proposed regulatory action would affect are IHEs, Indian tribes, and public or private nonprofit organizations. The Secretary believes that the costs imposed on applicants by the proposed priorities and requirements would be limited to paperwork burden related to preparing an application and that the benefits would outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the proposed priorities and requirements would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for RLTT funds, an eligible applicant would evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving a RLTT grant. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of that application to seek funding from other sources to train State VR counselors or RSA scholars in their pursuit to successfully graduate with an undergraduate or master's level degree, or certificate of completion and then secure or maintain employment at the State VR agency, filling critical VR positions where there are shortages or a need.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Paperwork Reduction Act of 1995

The proposed priorities and requirements do not contain any information collection requirements.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2025–00268 Filed 1–17–25; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2024–OSERS–0144]

Technical Assistance on State Data Collection—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Part B and Part C Fiscal Data

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority.

SUMMARY: The Department of Education (Department) proposes a priority for a National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B and Part C Fiscal Data Center (Fiscal Data Center) under the Technical Assistance on State Data Collection program. The Department may use this priority for competitions in fiscal year (FY) 2025 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the fiscal data collection requirements under Part B and Part C of the Individuals with Disabilities Education Act (IDEA). This Fiscal Data Center will support States in collecting, reporting, and determining how to best analyze and use their IDEA Part B and Part C fiscal data to establish and meet high expectations for each child with a disability and will customize its TA to meet each State's specific needs.

DATES: We must receive your comments on or before April 7, 2025.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *www.regulations.gov.* However,

if you require an accommodation or cannot otherwise submit your comments via *www.regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period closes. To ensure the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''

Note: The Department's policy is generally to make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Charles D. Kniseley, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20202. Telephone: (202) 987–0907. Email: *Charles.Kniseley@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

A brief summary of the rule is available at *www.regulations.gov/docket/ED-2024-OSERS-0144.*

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priority. To ensure that your comments have maximum effect in developing the final priority, we urge you to identify clearly the specific section of the proposed priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from the proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect public comments about the proposed priority by accessing *Regulations.gov*. To inspect comments in person, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary authority to reserve not more than one-half of one percent of the amounts appropriated under Part B for each fiscal year to provide TA activities authorized under section 616(i), where needed, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of sections 616 and 642 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. In addition, the Further Consolidated Appropriations Act, 2024, Public Law 118–47, gives the Secretary authority to use funds reserved under section 611(c) of IDEA to ''administer and carry out other services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA.'' Further Consolidated Appropriations Act, 2024, Public Law 118–47, Division D, Title III, 138 Stat. 460, 685 (2024).

Assistance Listing Number: 84.373F.

OMB Control Number: 1820–0028.

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1418(d), 1442; Further Consolidated Appropriations Act, 2024, Public Law 118–47, Division D, Title III, 138 Stat. 460, 685 (2024).

Applicable Program Regulations: 34 CFR 300.702.

Proposed Priority

This document contains one proposed priority.

National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B and Part C Fiscal Data.

Background

Collecting, analyzing, and using valid and reliable IDEA fiscal data are critical for States to be able to ensure that funds made available to support programs for infants, toddlers, children, and youth with disabilities are used consistent with requirements and to implement effective programs that improve outcomes for infants, toddlers, children, and youth with disabilities. However, the Department's review and analysis of State-submitted fiscal data show that States are not meeting all fiscal requirements or effectively using their data to understand how to meet the requirements, thereby impacting program effectiveness and outcomes. For example, State-submitted data regarding local educational agency (LEA) maintenance of effort (MOE) and coordinated early intervening services (CEIS) for school year 2021–2022 indicate that 239 LEAs across 20 States failed to maintain effort, with approximately 28 percent of those failures occurring in public charter schools that are LEAs. The data also show that States made repayment for only 26 of those LEA MOE shortfalls at the time States submitted their data to the Department. Assisting States in understanding and analyzing why LEAs, including public charter schools that are LEAs, are failing LEA MOE, and the factors contributing to delays in State repayments for MOE failures, has high-stakes implications for IDEA implementation, including ensuring that children with disabilities who attend public charter schools that are LEAs have sufficient resources to receive a free appropriate public education.

Changes to Federal fiscal requirements that impact the fiscal data States must submit to the Department require States to build their capacity to submit valid and reliable fiscal data. Starting in FY 2024, State lead agencies (LAs) for Part C are now reporting the data submission related to LAs' use of subgrants.[1] LAs have demonstrated

[1] Ten States indicated that they are currently subgranting IDEA Part C funds. It should be noted that subgranting of IDEA Part C funds was first

confusion in determining whether or not they are subgranting and need to understand what these data represent as well as the underlying requirements when subgranting Federal funds, including the cross-cutting Federal fiscal requirements and related responsibilities that apply both to the LA as a pass-through entity and to its early intervention services (EIS) providers and programs as subgrantees.

Changes within a State, such as the methods by which State and local special education and early intervention funding is calculated and distributed, can also impact its ability to submit accurate and valid fiscal data. As an example, when a State changes its special education funding formula from a per capita amount of State aid based on the number of children with disabilities in an LEA to a weighted formula that provides variable funding based on children within each of IDEA's 13 disability categories, the change potentially affects calculations of both State maintenance of financial support (MFS) and LEA MOE as well as a State's and LEAs' ability to meet MFS and LEA MOE respectively.

When States change LAs or shift LA responsibility under IDEA Part C to reorganize their early childhood programs and create offices that serve children birth to five,[2] this can also impact how fiscal data are collected, analyzed, and used. These types of organizational changes result in modifications to early intervention methods of establishing financial responsibility, consistent with 34 CFR 303.511, and often have implications for the LA's use of IDEA Part C funds and the methodology for determining indirect costs. There may also be the challenge of having new, inexperienced staff collecting, analyzing, and reporting IDEA Part C fiscal data in the new LA or office.

Even in States that have not reorganized their SEA or LA, the high rate of turnover among State staff responsible for implementing IDEA in some States is an ongoing challenge that creates a continuing need for supporting States' ability to accurately collect, report, analyze, and use fiscal data. In 2023, 23 percent of State Directors of Special Education, who are responsible for implementing IDEA Part B requirements including fiscal requirements, left their positions, and 38 percent of State Directors of Special Education had fewer than two years of experience in their roles that year.[3] Similar leadership trends can be found in Part C LAs. In 2023, 49 percent of Part C Coordinators, who are responsible for implementing IDEA Part C, including fiscal requirements and providing information related to their program's intended use of funds in the IDEA Part C grant application, had two years or less of experience in the position. In that same year, 74 percent of Part C Coordinators reported having five years or less experience.[4] The impacts of staff turnover on SEA and LA fiscal performance and data reporting can potentially include the loss of knowledge related to fiscal requirements; loss of institutional knowledge related to State policies, procedures, and practices; and costs associated with recruiting and training new staff.[5]

The situations identified above highlight States' need for support in building the knowledge and expertise to help ensure compliance with IDEA's fiscal data requirements and to use the results to identify issues and improve State systems. Lack of staff knowledge and expertise may contribute to inaccurate reporting of IDEA fiscal data by a State, which may lead to noncompliance with IDEA fiscal requirements and potential monetary consequences, including the recovery of funds.

The Department has found that because of the complex nature of, and high-stakes need for meeting, IDEA fiscal requirements, SEA and LA staff request and readily take advantage of targeted and intensive TA activities, such as expert-led communities of practice and hands-on workshops, including workshops devoted to the development of IDEA fiscal policies and procedures operationalizing State practices, to build their capacity to address fiscal system needs.

To meet the array of complex challenges regarding the collection, reporting, analysis, and use of IDEA fiscal data by States; to ensure States have access to TA, including fiscal tools tailored to their individual circumstances; and to support them in collecting and reporting complex IDEA fiscal data to improve IDEA programs, the Department proposes a priority to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B and Part C Fiscal Data.

Proposed Priority

The purpose of this proposed priority is to fund a cooperative agreement to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B and Part C Fiscal Data (Fiscal Data Center).

The Fiscal Data Center will provide TA to improve the capacity of States to meet the IDEA Part B and Part C fiscal data collection requirements under IDEA sections 618 and 642 and increase States' knowledge of the underlying IDEA fiscal requirements and calculations necessary to submit valid and reliable data for the following collections: (1) MFS in Section V of the IDEA Part B Annual State Application; (2) LEA MOE Reduction and CEIS; (3) Description of Use of IDEA Part B Section 611 Funds reserved for State administration and other State-level activities in Section III of the IDEA Part B Annual State Application; (4) Description of Use of Federal IDEA Part C Funds for the LA and the Interagency Coordinating Council in Section III of the IDEA Part C Annual State Application; (5) IDEA Part C MOE requirements; (6) Restricted Indirect Cost Rate/Cost Allocation Plan Information in Sections III and IV of the IDEA Part C Annual State Application; and (7) Part C Subgranting, in Section III.F. of the Part C Annual State Application.

The Fiscal Data Center must be designed to achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B and Part C fiscal data;

(b) Increased capacity of States to accurately perform calculations related to IDEA Part B and Part C statutory and regulatory fiscal requirements, and submit valid and reliable fiscal data under IDEA Part B and Part C;

permitted in the FY 2021 Consolidated Appropriations Act (HR 133), and is now supported by revisions to 34 CFR 76.50 of the Education Department General Administrative Regulations (EDGAR).

[2] Since FY 2021, 11 States have changed lead agencies, with a number moving to newly created early learning agencies serving birth to five.

[3] National Center for Systemic Improvement. (2024). *State special education director snapshot: Trends in turnover and tenure. https://ncsi.wested.org/wp-content/uploads/2023/11/NCSI-Leadership-Turnover-ADA-FINAL.pdf.*

[4] IDEA Infant and Toddler Coordinators Association. (2024). 2023 *Tipping points survey: Demographics, challenges, and opportunities. www.ideainfanttoddler.org/pdf/2023-Tipping-Points-Survey.pdf.*

[5] Research shows that the impact of staff turnover and inexperience on organizational performance is more pronounced in situations where staff are required to work on difficult tasks that require specialized skills. Meier, K. J., & Hicklin, A. (2008). Employee turnover and organizational performance: Testing a hypothesis from classical public administration. *Journal of Public Administration Research and Theory: J–PART, 18*(4), 573–590. *www.jstor.org/stable/25096385.*

(c) Improved State fiscal infrastructure to communicate and coordinate effective IDEA Part B and Part C fiscal data collections and reporting strategies among relevant State offices, including SEAs, LAs and other State agencies, LEAs, schools, public charter schools that are LEAs, and EIS programs or providers;

(d) Increased capacity of States to submit accurate and timely IDEA Part B and Part C fiscal data, and enhance State validation procedures to prevent errors in State-reported IDEA data;

(e) Increased capacity of States to train personnel to meet the IDEA Part B and Part C fiscal data collection and reporting requirements under sections 616, 618, and 642 of IDEA; and

(f) Increased capacity of SEAs and LAs to work with LEAs, including public charter schools that are LEAs, and EIS programs or providers to analyze and use IDEA fiscal data to identify issues and address those issues through monitoring, TA, and partner involvement.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Describe, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address the current and emerging needs of States and local systems to collect, report, analyze, and use high-quality IDEA Part B and Part C fiscal data. To meet this requirement, the applicant must—

(i) Demonstrate knowledge of how SEAs, LAs, LEAs, including public charter schools that are LEAs, and EIS programs and providers are meeting IDEA Part B and Part C fiscal data collection and reporting requirements and the underlying statutory and regulatory fiscal requirements, as well as knowledge of State and local data collection systems, as appropriate; and

(ii) Present applicable national, State, and local data to show the current capacity needs of SEAs, LAs, LEAs, including public charter schools that are LEAs, and EIS programs and providers to meet IDEA Part B and Part C fiscal data collection and reporting requirements; and

(2) Improve how SEAs and LAs use IDEA section 618 fiscal data as a means of both improving data quality and identifying programmatic strengths and areas for improvement, and indicate the likely magnitude or importance of the improvements.

(b) Describe, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(2) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following website provides more information on logic models and conceptual frameworks: *https://ies.ed.gov/ncee/rel/Products/Region/central/Resource/100644.*

(3) Be based on current research and make use of evidence-based [6] practices (EBPs). To meet this requirement, the applicant must describe—

(i) The current research on the capacity of SEAs, LEAs, including public charter schools that are LEAs, LAs, and EIS providers to report and use IDEA Part B and Part C data submitted under section 616 and section 618, as a means of both improving data quality and identifying strengths and areas for improvement; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(4) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to expand the knowledge base on—

(A) Fiscal data management and data system integration needed for IDEA Part B and Part C data collection and reporting;

(B) IDEA fiscal data validation that leads to improvements in the validity and reliability of fiscal data required by IDEA; and

(C) Effective ways to communicate fiscal data to local consumers (*e.g.,* parents, LEAs, including public charter schools that are LEAs, EIS programs or providers, the general public);

(ii) Its proposed approach to universal, general TA,[7] which must describe—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services;

(B) The products and services that the project proposes to make available;

(C) The development and maintenance of a high-quality website, with an easy-to-navigate design, that meets or exceeds government- or industry-recognized standards for accessibility; and

(D) The expected reach and impact of universal, general TA;

(iii) Its proposed approach to targeted, specialized TA,[8] which must describe—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services;

(B) The products and services that the project proposes to make available; and

(C) The proposed approach to measure the readiness of potential TA recipients to work with the project, including, at a minimum, an assessment of potential recipients' current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,[9] which must describe—

[6] For purposes of these requirements, ''evidence-based'' means the proposed project component is supported by one or more of strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale (as such terms are defined in 34 CFR 77.1).

[7] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[8] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[9] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or

(A) The intended recipients, including the type and number of recipients from a variety of settings and geographic distribution, that will receive the products and services;

(B) Its proposed approach to addressing States' challenges reporting high-quality IDEA fiscal data to the Department and the public, which should, at a minimum, include providing virtual and on-site consultation to the SEA or LA to—

(*1*) Implement model practices for the management of IDEA data and data system integration policies, procedures, processes, and activities within the State;

(*2*) Develop, use, or adapt tools to meet State-specific IDEA data needs;

(*3*) Develop a sustainability plan for the State to continue the management of IDEA data and data system integration work in the future; and

(*4*) Implement a cybersecurity plan to ensure a secure IDEA fiscal data system;

(C) Its proposed approach to measure the readiness of SEAs and LAs to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the State and local levels;

(D) Its proposed plan to prioritize States with the greatest need for intensive TA to receive products and services;

(E) Its proposed plan for assisting SEAs and LAs to build or enhance training systems that include professional development based on adult learning principles and coaching;

(F) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, LAs, regional TA providers, LEAs, including public charter schools that are LEAs, local EIS programs and providers, and families) to ensure that there is communication between each level and that there are systems in place to support the collection, reporting, analysis, and use of high-quality IDEA fiscal data as well as IDEA fiscal data management and data system integration; and

(G) The expected impact of intensive, sustained TA; and

(v) How the proposed project will intentionally engage families of children with disabilities and individuals with disabilities—including underserved families [10] and individuals—in the development, implementation, and evaluation of its products and services across all levels of TA;

(5) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration, including the process by which the proposed project will collaborate with Department-funded centers (including privacy TA centers such as the DaSy Center that provides Department-funded TA on early childhood data privacy, and the Privacy Technical Assistance Center) and other federally funded TA centers to develop and implement a coordinated TA plan when they are involved in a State; and

(iii) How the proposed project will use non-project resources, such as non-Federal funds and in-kind contributions, to achieve the intended project outcomes; and

(6) Systematically disseminate information, products, and services to varied intended audiences. To address this requirement the applicant must describe—

(i) The variety of dissemination strategies the project will use throughout the five years of the project to promote awareness and use of its products and services;

(ii) How the project will tailor dissemination strategies across all planned levels of TA to ensure that products and services reach intended recipients, and those recipients can access and use those products and services;

(iii) How the project's dissemination plan is connected to the proposed outcomes of the project; and

(iv) How the project will evaluate and correct all digital products and external communications to ensure they meet or exceed government or industry-recognized standards for accessibility.

(c) In the narrative section of the application under ''Quality of the project evaluation or other evidence-building,'' describe how the project will develop an evaluation plan in consultation with, and to be implemented by, a third-party evaluator.[11] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions must be related to the project's proposed logic model required under paragraph (b)(1)(ii) of these application and administrative requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. In measuring progress of implementation across all levels of TA, the plan must include criteria for determining the extent to which the project's products and services reached intended recipients; data, including feedback from recipients, on how recipients used the products and services; and the impact of the products and services. The plan must also specify sources for data, and measures and instruments appropriate to the evaluation questions, including information on reliability and validity of the measures and associated instruments where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the Annual Performance Report and at the end of Year 2; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Describe, in the narrative section of the application under ''Adequacy of resources and quality of the project personnel,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of

operations that support increased recipient capacity or improved outcomes at one or more systems levels.

[10] For the purposes of this priority, ''underserved families'' refers to foster, kinship, migrant, technologically unconnected, and military- or veteran-connected families; and families of color, living in poverty, without documentation of immigration status, experiencing homelessness or housing insecurity, or impacted by the justice system, including the juvenile justice system. Underserved families also refers to families that include: members of a federally or State recognized Indian Tribe; English learners; adults who experience a disability; members who are lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+); adults in need of improving their basic skills or with limited literacy; and disconnected adults.

[11] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities;

(4) The proposed project will have processes, resources, and funds in place to provide equitable access for project staff, contractors, and partners, who require digital accessibility accommodations; [12] and

(5) The proposed costs are reasonable in relation to the anticipated results and benefits, and funds will be spent in a way that increases their efficiency and cost-effectiveness.

(e) Describe, in the narrative section of the application under ''Quality of the management plan,''—

(1) How the proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Allocations of key project personnel and any consultants and subcontractors and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) How the proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) How the proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the Office of Special Education Programs (OSEP) project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A three-day project directors' conference in Washington, DC, during each year of the project period, provided that, if the conference is conducted virtually, the project must reallocate unused travel funds no later than the end of the third quarter of each budget period; and

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Budget at least 50 percent of the grant award for providing targeted and intensive TA to States; and

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority

We will announce the final priority in a document in the **Federal Register**. We will determine the final priority after considering public comments on the proposed priority and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $200 million or more (adjusted every three years by the Administrator of Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

[12] For information about digital accessibility and accessibility standards from Section 508 of the Rehabilitation Act, visit *https://sites.ed.gov/idea/topic-areas/#Accessibility-Creating-Content.*

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866, as amended by Executive Order 14094. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the proposed priority only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, territorial, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priority easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed priority clearly stated?
- Does the proposed priority contain technical terms or other wording that interferes with its clarity?
- Does the format of the proposed priority (grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity?
- Would the proposed priority be easier to understand if we divided it into more (but shorter) sections?
- Could the description of the proposed priority in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed priority easier to understand? If so, how?
- What else could we do to make the proposed priority easier to understand?

To send any comments about how the Department could make the proposed priority easier to understand, see the instructions in the **ADDRESSES** section.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification: The Secretary certifies that the proposed priority would not have a significant economic impact on a substantial number of small entities. The small entities that this proposed regulatory action would affect are LEAs, including charter schools that operate as LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the proposed priority would be limited to paperwork burden related to preparing an application and that the benefits of the proposed priority would outweigh any costs incurred by the applicants.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the proposed priority would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity probably would apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the proposed priority would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant, because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Paperwork Reduction Act of 1995

The proposed priority contains information collection requirements that are approved by OMB under OMB control number 1820–0028. The proposed priority does not affect the currently approved data collection.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the

requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2025–00985 Filed 1–17–25; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Office of Subsistence Management

50 CFR Part 100

[Docket No. DOI–2024–0011; 256D0102DM DS61900000 DMSN00000.000000 DX61901]

RIN 1090–AB29

Subsistence Management Regulations for Public Lands in Alaska—2026–27 and 2027–28 Subsistence Taking of Wildlife Regulations

AGENCY: Forest Service, Agriculture; Office of Subsistence Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for hunting and trapping seasons, harvest limits, and methods and means related to taking of wildlife for subsistence uses during the 2026–27 and 2027–28 regulatory years. The Federal Subsistence Board (hereafter referred to as ''the Board'') is on a schedule of completing the process of revising subsistence taking of wildlife regulations in even-numbered years and subsistence taking of fish and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable cycle. When final, the resulting rulemaking will replace the existing subsistence wildlife taking regulations. This proposed rule could also amend the general regulations on subsistence taking of fish and wildlife.

DATES: *Public meetings:* The Federal Subsistence Regional Advisory Councils (hereafter referred to as ''the Councils'') will receive comments and make proposals to change this proposed rule during public meetings held between February 18, 2025, and April 2, 2025. The Councils will hold another round of public meetings to discuss and receive comments on the proposals and make recommendations on the proposals to the Board on several dates between September 16, 2025, and October 30, 2025 (see Alaska Subsistence Regional Advisory Council Meetings for 2025; 89 FR 63962; August 06, 2024). The Board will discuss and evaluate proposed regulatory changes during a public meeting in Anchorage, Alaska, in April 2026. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: Comments and proposals to change this proposed rule must be received or postmarked by April 4, 2025.

ADDRESSES:

Public meetings: The Board and the Councils' public meetings are held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: You may submit comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter Docket number DOI–2024–0011. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

By hard copy: Submit by U.S. mail or hand delivery: Regulations, Attn: DOI–2024–0011; Office of Subsistence Management; 1011 E Tudor Road M/S 121, Anchorage AK 99503. If in-person Council meetings are held, you may also deliver a hard copy to the Designated Federal Official attending any of the Councils' public meetings. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Review Process section below for more information).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Office of Subsistence Management, Attention: Crystal Leonetti, Director; (907) 786–3888 or *subsistence@ios.doi.gov.* For questions specific to National Forest System lands, contact Gregory Risdahl, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 302–7354 or *gregory.risdahl@usda.gov.* In compliance with the Providing Accountability Through Transparency Act of 2023, please see Docket No. DOI–2024–0011 on *https://www.regulations.gov* for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Background

Under title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (hereafter referred to as ''the Secretaries'') jointly implement the Federal Subsistence Management Program (hereafter referred to as ''the Program''). The Program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. Only Alaska residents of areas identified as rural are eligible to participate in the Program. The Secretaries published temporary regulations to carry out the Program in the **Federal Register** on June 29, 1990 (55 FR 27114), and final regulations on May 29, 1992 (57 FR 22940). Program officials have subsequently amended these regulations a number of times. Because the Program is a joint effort between the Departments of the Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): The Agriculture regulations are at title 36, ''Parks, Forests, and Public Property,'' and the Interior regulations are at title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. Consequently, to indicate that identical changes are proposed for regulations in both titles 36 and 50, in this document we will present references to specific sections of the

CFR as shown in the following example: § __.24.

The Program regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife. Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board (hereafter referred to as ''the Board'') to administer the Program. The Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- Five public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, Bureau of Indian Affairs;
- The Alaska State Director, Bureau of Land Management;
- The Alaska Regional Director, National Park Service;
- The Alaska Regional Director, U.S. Fish and Wildlife Service; and
- The Alaska Regional Forester, U.S. Forest Service.

Through the Board, these agencies and public members participate in the development of regulations for subparts C and D. Subpart C sets forth important Board determinations regarding program eligibility, *i.e.,* which areas of Alaska are considered rural and which species are harvested in those areas as part of a ''customary and traditional use'' for subsistence purposes. Subpart D sets forth specific seasons, limits, and other harvest parameters and requirements.

In administering the Program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

Public Review Process—Comments, Proposals, and Public Meetings

The Councils have a substantial role in reviewing this proposed rule and making recommendations for the final rule. The Board, through the Councils, will hold public meetings in person and via teleconference on this proposed rule at the following locations in Alaska, on the following dates:

TABLE 1—WINTER 2025 MEETINGS OF THE FEDERAL SUBSISTENCE REGIONAL ADVISORY COUNCILS

Regional Advisory Council	Dates	Location
Southeast Alaska—Region 1	March 18–20	Sitka.
Southcentral Alaska–Region 2	March 12–13	Cordova.
Kodiak/Aleutians—Region 3	March 6–7	Kodiak.
Bristol Bay—Region 4	February 18–19	Naknek.
Yukon-Kuskokwim Delta—Region 5	March 4–5	Bethel.
Western Interior—Region 6	February 25–26	Fairbanks.
Seward Peninsula—Region 7	April 1–2	Nome.
Northwest Arctic—Region 8	March 27–28	Kotzebue.
Eastern Interior—Region 9	February 19–20	Fairbanks.
North Slope—Region 10	February 27–28	Utqiagvik.

During April 2025, the written proposals to change the regulations at subpart D, take of wildlife and subpart C, customary and traditional use determinations, will be compiled and distributed for public review. Written public comments will be accepted on the distributed proposals during a second 30-day public comment period, which will be announced in statewide newspaper and radio ads and posted to the Program web page and social media. The Board, through the Councils, will hold a second series of public meetings or teleconference meetings in September through October 2025, to receive comments on specific proposals and to develop recommendations to the Board on the following dates:

TABLE 1—FALL 2025 MEETINGS OF THE FEDERAL SUBSISTENCE REGIONAL ADVISORY COUNCILS

Regional Advisory Council	Dates	Location
Southeast Alaska—Region 1	October 21–23	Wrangell.
Southcentral Alaska–Region 2	October 14–15	Anchorage.
Kodiak/Aleutians—Region 3	September 17–18	TBD.
Bristol Bay—Region 4	October 29–30	Dillingham.
Yukon-Kuskokwim Delta—Region 5	October 21–23	TBD.
Western Interior—Region 6	October 7–8	Fairbanks.
Seward Peninsula—Region 7	October 14–15	Nome.
Northwest Arctic—Region 8	October 27–28	Kotzebue.
Eastern Interior—Region 9	October 8–10	Tok.
North Slope—Region 10	September 16–17	Utqiagvik.

A public notice of specific dates, times, call-in number(s), and how to participate and provide public testimony will be published in local and statewide newspapers, announced in radio ads, and posted to the Program web page and social media at least 2 weeks prior to each meeting. The amount of work on each Council's agenda determines the length of each Council's meeting, but typically the meetings are scheduled to last 2 days. Occasionally a Council will lack information necessary during a scheduled meeting to make a recommendation to the Board or to provide comments on other matters affecting subsistence in the region. If this situation occurs, the Council may announce on the record a later teleconference to address the specific

issue when the requested information or data is available; it is noted that any follow-up teleconference would be an exception and must be approved, in advance, by the Director of the Office of Subsistence Management. These teleconferences are open to the public, along with opportunities for public comment; the date and time will be announced during the scheduled meeting, and that same information will be announced through news releases and local radio, newspaper, Program web page, and social media ads.

The Board will discuss and evaluate proposed changes to the subsistence management regulations during a public meeting scheduled to be held in Anchorage, Alaska, in April 2026. The Council Chairs, or their designated representatives, will present their respective Councils' recommendations at the Board meeting. Additional oral testimony may be provided on specific proposals before the Board at that time. At that public meeting, the Board will deliberate and take final action on proposals received that request changes to this proposed rule.

Proposals to the Board to modify the general fish and wildlife regulations, wildlife harvest regulations, and customary and traditional use determinations must include the following information:

a. Name, address, and telephone number of the requestor;

b. Each section and/or paragraph designation in the current regulations for which changes are suggested, if applicable;

c. A description of the regulatory change(s) desired;

d. A statement explaining why each change is necessary;

e. Proposed wording changes; and

f. Any additional information that you believe will help the Board in evaluating the proposed change.

The Board will immediately reject proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § ____.24, subpart C (the regulations governing customary and traditional use determinations) and § ____.25 and ____.26 of subpart D (the general and specific regulations governing the subsistence take of wildlife). If a proposal needs clarification, prior to being distributed for public review, the proponent may be contacted, and the proposal could be revised based on their input. Once a proposal is distributed for public review, no additional changes may be made as part of the original submission. During the April 2026 meeting, the Board may defer review and action on some proposals to allow time for cooperative planning efforts, or to acquire additional needed information. The Board may elect to defer taking action on any given proposal if the workload of staff, Councils, or the Board becomes excessive. These deferrals may be based on recommendations by the affected Council(s) or staff members, or on the basis of the Board's intention to do least harm to the subsistence user and the resource involved. A proponent of a proposal may withdraw the proposal provided it has not been considered, and a recommendation has not been made, by a Council. The Board may consider and act on alternatives that address the intent of a proposal while differing in approach.

You may submit written comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. DOI–2024–0011, or by appointment, provided no public health or safety restrictions are in effect, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays, at: Office of Subsistence Management, 1011 East Tudor Road, Anchorage, AK 99503.

Reasonable Accommodations

The Board is committed to providing access to these meetings for all participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to Robbin LaVine, 907–786–3888, *subsistence@ios.doi.gov,* or 800–877–8339 (TTY), 7 business days prior to the meeting you would like to attend.

Tribal Consultation and Comment

As expressed in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and federally recognized Indian Tribes (herein after referred to as ''Tribes'') as listed in 82 FR 4915 (January 17, 2017). Consultation with Alaska Native corporations is based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.''

The Alaska National Interest Lands Conservation Act does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, because Tribal members are affected by subsistence fishing, hunting, and trapping regulations, the Secretaries, through the Board, will provide Tribes and Alaska Native corporations an opportunity to consult on this proposed rule.

The Board will engage in outreach efforts for this proposed rule, including a notification letter, to ensure that Tribes and Alaska Native corporations are advised of the mechanisms by which they can participate. The Board provides a variety of opportunities for consultation: proposing changes to the existing rule, commenting on proposed changes to the existing rule, engaging in dialogue at the Regional Council meetings, engaging in dialogue at Board meetings, and providing input in person, by mail, email, or phone at any time during the rulemaking process. The Board will commit to efficiently and adequately providing an opportunity to Tribes and Alaska Native corporations for consultation in regard to subsistence rulemaking.

The Board will consider Tribes' and Alaska Native corporations' information, input, and recommendations, and address their concerns as much as practicable.

Developing the 2026–27 and 2027–28 Wildlife Seasons and Harvest Limit Proposed Regulations

In titles 36 and 50 of the CFR, the subparts C and D regulations are subject to periodic review and revision. The Board currently completes the process of revising subsistence take of wildlife regulations in even-numbered years and fish and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable cycle. Nonrural determinations are

taken up during every other fish and shellfish cycle, beginning in 2018.

Based on Board policy, the Board reviews each closure to the take of fish/shellfish and wildlife every 4 years, during each applicable cycle. The following table lists the current closures being reviewed for this cycle. In reviewing a closure, the Board may maintain, modify, or rescind the closure. If a closure is rescinded, the existing regulations apply, or if no regulations are in place, any changes to or the establishment of seasons, methods and means, and harvest limits must go through the full public review process. The public is encouraged to comment on these closures, and anyone recommending a regulatory change outside the scope of a closure review (*i.e.,* a change not directly affecting the closure) should submit a regulatory proposal.

TABLE 3—WILDLIFE CLOSURES TO BE REVIEWED BY THE FEDERAL SUBSISTENCE BOARD FOR THE 2026–2027 AND 2027–2028 REGULATORY YEARS

Unit and area descriptor	Species	Closure
2	Deer	Closed from Aug. 1–15 to non-federally qualified users. Non-federally qualified users may only harvest up to two bucks.
5A, except Nunatak Bench, east of the Dangerous River	Moose	Closed from Sept. 16–30 to non-federally qualified users.
5A, except Nunatak Bench, west of the Dangerous River	Moose	Closed from Oct. 8–21 to non-federally qualified users.
9C, draining into the Naknek River from the South	Moose	Closed from Dec. 1–31 to non-federally qualified users.
17A, 17C, Nushagak Peninsula	Caribou	Closed to non-federally qualified users unless the population estimate exceeds 900 caribou.
22A, North	Moose	Closed from Sep. 21–Aug. 31 to non-federally qualified users.
22A, Unalakleet	Moose	Closed to non-federally qualified users.
22A remainder	Moose	Closed from Oct. 1–Aug. 31 to non-federally qualified users.
22B, west of the Darby Mountains	Moose	Closed to non-federally qualified users during fall season.
22B, west of the Darby Mountains	Moose	Closed except by residents of White Mountain and Golovin during the winter season.
22D, Kougarok, Kuzitrin, and Pilgrim River drainages	Moose	Closed except by residents of Units 22C and 22D.
22D, west of Tisuk River drainage and Canyon Creek	Moose	Closed except by residents of Units 22C and 22D.
22D remainder	Moose	Closed to non-federally qualified users.
22E	Moose	Closed to non-federally qualified users.
23, Baird Mountains	Sheep	Closed to non-federally qualified users.
23, Noatak River corridor, Squirrel, Eli, and Agashashok River drainages.	Caribou	Closed to non-federally qualified users.
25D west	Moose	Closed except by residents of Unit 25D west and Birch Creek.
26C	Muskox	Closed to non-federally qualified users.

The current subsistence program regulations form the starting point for consideration during each new rulemaking cycle. Consequently, in this rulemaking action pertaining to wildlife, the Board will consider proposals to revise the regulations in any of the following sections of titles 36 and 50 of the CFR:

- § __.24: customary and traditional use determinations;
- § __.25: general provisions governing the subsistence take of wildlife, fish, and shellfish; and
- § __.26: specific provisions governing the subsistence take of wildlife.

As such, the text of the proposed 2026–2028 subparts C and D subsistence regulations in titles 36 and 50 is the combined text of previously issued rules that revised these sections of the regulations. The following **Federal Register** citations show when these CFR sections were last revised. Therefore, the regulations established by these final rules constitute the text of this proposed rule:

The text of the proposed amendments to 36 CFR 242.24 and 242.26 and 50 CFR 100.24 and 100.26 is the final rule for the 2024–2026 regulatory period for wildlife (89 FR 70358, August 29, 2024).

The text of the proposed amendments to 36 CFR 242.25 and 50 CFR 100.25 is the final rule for the 2022–2024 regulatory period for wildlife (87 FR 44858; July 26, 2022).

These regulations will remain in effect until subsequent Board action changes elements as a result of the public review process outlined above in this document and a final rule is published.

Compliance with Statutory and Regulatory Authorities

National Environmental Policy Act

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence

uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of the subsistence program regulations was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the regulations will not reach the ''may significantly restrict'' threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act of 1995 (PRA)

This proposed rule does not contain any new collections of information that require Office of Management and Budget (OMB) approval under the PRA (44 U.S.C. 3501 *et seq.*). OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100, and assigned OMB Control Number 1018–0075, with an expiration date of November 30, 2027. 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.

Regulatory Planning and Review (Executive Order 12866)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic impact on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this proposed rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to, or impact on the economy. Therefore, the Departments certify that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this proposed rule is not a major rule. It will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will 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.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these proposed regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

Title VIII of ANILCA does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, as described above under *Tribal Consultation and Comment,* the Secretaries, through the Board, will provide federally recognized Tribes and Alaska Native corporations a variety of opportunities for consultation: commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this proposed rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Justin Koller drafted this proposed rule under the guidance of Crystal Leonetti of the Office of Subsistence Management, Department of the Interior, Office of the Assistant Secretary for Policy, Management, and Budget, Anchorage, Alaska. Additional assistance was provided by:

- Chris McKee, Alaska State Office, Bureau of Land Management;
- Eva Patton, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jill Klein, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Gregory Risdahl, Alaska Regional Office, USDA–Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR part

242 and 50 CFR part 100 for the 2026–27 and 2027–28 regulatory years:

Proposed amendments to 36 CFR 242.24 and 242.26 and 50 CFR 100.24 and 100.26 last amended by the final rule for the 2024–2026 regulatory period for wildlife (89 FR 70358, August 29, 2024).

Proposed amendments to 36 CFR 242.25 and 50 CFR 100.25 last amended by the final rule for the 2022–2024 regulatory period for wildlife (87 FR 44858; July 26, 2022).

Crystal Leonetti,

Director, DOI—Office of Subsistence Management.

Gregory Risdahl,

Subsistence Program Leader, USDA–Forest Service.

[FR Doc. 2025–00434 Filed 1–17–25; 8:45 am]

BILLING CODE 3411–15–P; 4334–13–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2025–6; Order No. 8459]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is acknowledging a recent Postal Service filing requesting the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 27, 2025.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Proposal
III. Notice and Comment
IV. Information Request
V. Ordering Paragraphs

I. Introduction

On December 19, 2024, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports.[1] The Petition presents an updated facility rental analysis used to distribute space provision costs to individual products in the *Annual Compliance Report.* Petition at 1.

II. Proposal

Background. The Postal Service explains that the recent facility rental analysis, which was completed in 1992, was based on Facility Management System (FMS) data. *Id.* Proposal at 1 (citing Docket No. R94–1, USPS LR–G–120, Section IV.). This analysis relied on a sampling approach to estimate rental values for 18 facility groupings over a study period of November 30, 1981, to November 30, 1991. Petition, Proposal at 2. The Postal Service notes that the adjusted results from this analysis were last used to distribute space provision costs in Docket No. ACR2023, Library Reference USPS–FY23–8. *Id.* at 1. The Postal Service explains that there are two analyses in the facility portion of Library Reference USPS–FY23–8. *Id.*

The first consists of the results from an updated Facility Space Usage Study (FSUS), which was approved by the Commission via Proposal Nine in August 2020.[2] The results from that analysis are used to distribute both space support and space provision costs. Petition, Proposal at 2.

The second analysis concerns rental costs and was listed as a near-term study in response to the Commission's request for possible data improvements.[3] The results from this analysis are used to distribute the space provision costs only. Petition, Proposal at 2. The Postal Service identifies the affected cost segments in Table 1. *Id.*

The Postal Service identifies three key limitations of the 1992 rental value analysis. *Id.* at 4–5. First, the Postal Service observes the apparent absence of a definitive source for nationwide cap rates, which are used to evaluate real estate investments that can be calculated by dividing the net income from a property (*i.e.,* rent) by its current market value. *Id.* at 4. Second, the Postal Service notes that the FMS ''building cost'' (construction costs for the facility at the time the facility was built or the acquisition costs at the time the facility was acquired) and ''land cost'' (purchase price for the land at the time the property was acquired) fields contain cost data that were incurred at different points in time. *Id.* at 4–5. Third, the Postal Service explains that the definition of ''new'' buildings covered a 10-year period (over which fair market value can change significantly) and that ''new owned'' data were used to impute rental values for ''old owned'' facilities and were applied to all ''old'' properties even though some facilities were decades older than other facilities. *Id.* at 5.

Proposal. Based on the discussion above, the Postal Service states that it proposes a simplified and more representative analysis in which the rental cost distribution by operation and function is estimated using Fiscal Year (FY) 2019 eFMS rental cost data for all active facilities included in Proposal Nine. *Id.* This proposal does not use sampling methods. *Id.* The Postal Service describes the proposed data sources, organization of the inputs and outputs, methodology, and modifications to the facility file appearing in Library Reference USPS–FY23–8. *Id.* at 6–10.

Impact. The Postal Service asserts that using postal data rather than sampling would mean that ''subjective inputs, such as capitalization rates and rent change factors, are no longer needed.'' *Id.* at 1. The Postal Service contends that its proposal would ''more accurately represent[ ] market value rental rates for each operation and function.'' *Id.* at 10. The Postal Service states that the ''previous methodology may have overstated the market value rental rates for plants . . . .'' *Id.* The Postal Service presents Table 2, which summarizes the 2019 rental cost distribution by operation and function (component) that would be generated by adopting the proposal. *Id.* at 10, 12. The Postal Service presents Table 3, which summarizes the impact that applying this proposal would have had on the overall (*i.e.,* across all cost segments) volume-variable and product-specific costs for each product in FY 2023.[4] Under the proposal, the Postal Service estimates that attributable costs for Market Dominant products and Competitive products would decrease

[1] Petition of the United States Postal Service to Initiate a Proceeding to Change Analytical Principles and Notice of Filing Non-Public Materials, December 19, 2024 (Petition). The proposed change is attached to the Petition (Proposal).

[2] *Id.* at 1–2 (citing Docket No. RM2020–1, Order on Analytical Principles Used in Periodic Reporting (Proposal Nine), August 17, 2020 (Order No. 5637)).

[3] *Id.* (citing Docket No. RM2022–1, Notice and Order of Proposed Rulemaking on Periodic Reporting, October 8, 2021 (Order No. 6004); Docket No. RM2022–1, Initial Comments of the United States Postal Service, March 25, 2022, at 10).

[4] *Id.* at 10, 13. The Postal Service states that a more comprehensive version of Table 3, which includes disaggregated rows for individual Competitive Products, is provided under seal. *Id.* at 11.

2.12 percent and 1.53 percent, respectively. *Id.*

III. Notice and Comment

The Commission establishes Docket No. RM2025–6 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission's website at *https://www.prc.gov.* Interested persons may submit comments on the Petition and the proposal by February 27, 2025. Pursuant to 39 U.S.C. 505, Almaroof Agoro is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

IV. Information Request

On December 23, 2024, Pitney Bowes filed a motion seeking issuance of an information request to the Postal Service.[5] Because the response to the proposed question is likely to aid evaluation of the Petition, the Motion is granted. The Postal Service shall respond to the following question by January 7, 2025: Please provide modified versions of Library Reference USPS–FY23–24: FY 2023 Non-Operation Specific Piggyback Factors (Public Portion) and Library Reference USPS–FY23–25: FY 2023 Mail Processing Piggyback Factors (Operation Specific) that incorporate the impact of the proposed changes to analytical principles.

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2025–6 for consideration of the matters raised by the Petition of the United States Postal Service to Initiate a Proceeding to Change Analytical Principles and Notice of Filing Non-Public Materials, filed December 19, 2024.

2. Comments by interested persons in this proceeding are due February 27, 2025.

3. The Motion of Pitney Bowes Inc. for Issuance of Information Request, filed December 23, 2024, is granted.

4. The Postal Service shall respond to the following question by January 7, 2025, and provide modified versions of Library Reference USPS–FY23–24: FY 2023 Non-Operation Specific Piggyback Factors (Public Portion) and Library Reference USPS–FY23–25: FY 2023 Mail Processing Piggyback Factors (Operation Specific) that incorporate the impact of the proposed changes to analytical principles.

[5] Motion of Pitney Bowes Inc. for Issuance of Information Request, December 23, 2024 (Motion).

5. Pursuant to 39 U.S.C. 505, the Commission appoints Almaroof Agoro to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

6. The Secretary shall arrange for the publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2025–00153 Filed 1–17–25; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0627; FRL–12536–01–R9]

Air Plan Revisions; California Air Plan Revisions; San Joaquin Valley Unified Air Pollution Control District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on three permitting rules submitted as a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or ''District'') portion of the California State Implementation Plan (SIP). These revisions concern the District's New Source Review (NSR) permitting program for new and modified sources of air pollution under section 110(a)(2)(C) and part D of title I of the Clean Air Act (CAA or ''Act''). This action will update the California SIP with rules that the District has revised to address deficiencies identified in a previous limited disapproval action and to incorporate other revisions related to NSR requirements. We are taking comments on this proposal and plan to follow with a final action. Elsewhere in this **Federal Register**, we are making an interim final determination that will defer the imposition of CAA sanctions associated with our previous limited disapproval action. This action also proposes to revise regulatory text to clarify that the SJVUAPCD is not subject to the federal implementation plan related to protection of visibility.

DATES: WComments must be received on or before February 20, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0627 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Doris Lo, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3959, or by email at *lo.doris@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal including the date they were adopted by the District and submitted to the EPA by the California

Air Resources Board (CARB), which is the governor's designee for California SIP submittals.

TABLE 1—SUBMITTED RULES

Rule No.	Rule title	Adopted	Submitted
1020	Definitions	4/20/23	10/13/23
2020	Exemptions	12/18/14	10/13/23
2201	New and Modified Stationary Source Review Rule	4/20/23	10/13/23

On April 13, 2024, the submittal of each rule became complete by operation of law.

B. Are there other versions of these rules?

The SIP-approved versions of the submitted rules are identified below in Table 2.

TABLE 2—SIP-APPROVED RULES

Rule No.	Rule title	SIP approval date	**Federal Register** citation
1020	Definitions	10/02/14	79 FR 59433.
2020	Exemptions	9/17/14	79 FR 55637.
2201	New and Modified Stationary Source Review Rule	7/10/23	88 FR 43434.

If the EPA finalizes the action proposed herein, these rules will be replaced in the SIP by the submitted set of rules listed in Table 1. Additionally, as described below, the EPA's final approval of these rules will resolve our previous limited disapproval of Rule 2201.

C. What is the purpose of the submitted rules?

The submitted rules constitute part of the District's program for preconstruction review and permitting of new or modified stationary sources under its jurisdiction. The rule revisions that are the subject of this action update the District's preconstruction review and permitting program and are intended to satisfy the NSR program requirements under part D of title I of the Act (''nonattainment NSR'' or ''NNSR''), the general preconstruction review requirements under section 110(a)(2)(C) of the Act (''minor NSR''), and related EPA regulations. The submitted rules are also intended to resolve deficiencies identified in our July 10, 2023 final action (''2023 NSR Action''),[1] which included a limited disapproval of a prior version of Rule 2201. The rules also include other assorted revisions, including new and revised definitions and applicability and compliance provisions.

The San Joaquin Valley is currently designated attainment for the nitrogen dioxide, carbon monoxide, particulate matter equal to or less than 10 micrometers (PM_{10}), sulfur dioxide (SO_2), and lead National Ambient Air Quality Standards (NAAQS). The San Joaquin Valley is currently designated ''Extreme'' nonattainment for the 1997, 2008, and 2015 ozone NAAQS and ''Serious'' nonattainment for the 1997, 2006, and 2012 particulate matter equal to or less than 2.5 micrometers ($PM_{2.5}$) NAAQS.[2] Therefore, the District is required to adopt and implement a SIP-approved NNSR permitting program that applies to new or modified major stationary sources of ozone precursors, $PM_{2.5}$, and $PM_{2.5}$ precursors within the San Joaquin Valley.

The SIP submittal evaluated in this action includes revisions to Rule 1020, ''Definitions,'' Rule 2020, ''Exemptions,'' and Rule 2201, ''New and Modified Stationary Source Review Rule.'' Rule 1020 provides definitions for certain key terms used throughout the District's regulations. Rule 2020 specifies types of emissions units that are not required to obtain an Authority to Construct (ATC) or Permit to Operate (PTO). The rule also specifies the recordkeeping requirements to verify a permit exemption and outlines the compliance schedule for existing emissions units that lose their permit exemption. Rule 2201 is intended to satisfy the requirements of the NNSR program under part D of title I of the CAA that are applicable in ozone and $PM_{2.5}$ nonattainment areas and the general NSR program permit requirements.

The EPA's technical support document (TSD) for this action, which is included in the docket for our proposed rulemaking, has more information about the purposes of the submitted rules and the District's revisions.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

The EPA has evaluated the submitted rules to determine whether they address the deficiencies identified in our 2023 NSR Action. We have also evaluated all additional rule revisions for compliance with CAA sections 172(c)(5), 173, 182(e), and 189(b), which establish the requirements for stationary source preconstruction permitting programs, including those specifically applicable for an Extreme ozone nonattainment area and Serious $PM_{2.5}$ nonattainment area, as well as the federal regulations applicable to stationary source permitting at 40 CFR 51.160 through 51.165. Additionally, the EPA reviewed the rules for consistency with other general CAA requirements for SIP submittals, including requirements at CAA section 110(a)(2)(A) regarding rule enforceability and requirements at CAA sections 110(l) and 193 for SIP revisions. We have also considered whether the rules meet the federal visibility requirements related to state NNSR programs as described in 40 CFR 51.307.

[1] 87 FR 45730.

[2] See 40 CFR 81.305 (describing geographic extent of San Joaquin Valley nonattainment area for each NAAQS).

B. Do the rules meet the evaluation criteria?

With the exceptions noted below, the EPA finds that Rules 1020, 2020, and 2201 generally satisfy the applicable CAA and regulatory requirements for sources subject to NNSR permit program requirements. Below, we discuss our evaluation of the submitted rules. The TSD for this action contains a more detailed analysis.

The SJVUAPCD revised Rules 1020 and 2201 to address the deficiencies identified in the 2023 NSR action. Specifically, the District revised Rules 1020 and 2201 to address our findings that the previous version of Rule 2201 (1) omitted certain definitions necessary for application of the District's permitting program for new and modified stationary sources; (2) included provisions allowing for interprecursor trading (IPT) that are no longer permissible due to a 2021 D.C. Circuit Court of appeals decision; (3) allowed for impermissible exemptions for relocated sources; (4) lacked public notice requirements for certain minor sources; (5) included an offset tracking system that failed to ensure equivalency with federal offset requirements; (6) did not include certain required provisions for temporary replacement units and routine replacement emission units; and (7) included other more minor deficiencies. The District addressed all these deficiencies in the SIP submission that is being evaluated in this action. The TSD for this action provides further detail on these deficiencies and how they were addressed by the District. While the District addressed all the deficiencies identified in the 2023 NSR action, pursuant to sections 110(k)(3) and 301(a) of the Act, we are proposing a limited approval and limited disapproval of Rules 1020, ''Definitions,'' 2020, ''Exemptions,'' and 2201, ''New and Modified Stationary Source Review Rule'' due to the newly identified deficiencies found in each rule. These new deficiencies are described in Section II.C of this action.

The submitted rules comply with the substantive and procedural requirements of CAA section 110(l). With respect to the procedural requirements, based on our review of the public process documentation included with the submitted rules, we find that the District has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to submittal of this SIP revision and has satisfied these procedural requirements under CAA section 110(l).

With respect to the substantive requirements of CAA section 110(l), we have determined that our approval of the submitted rules would not interfere with the area's ability to attain or maintain the NAAQS or with any other applicable requirements of the CAA. Similarly, we find that the submitted rules are approvable under section 193 of the Act because they do not modify any control requirement in effect before November 15, 1990, without ensuring equivalent or greater emission reductions. The submitted rules are otherwise consistent with criteria for the EPA's approval of regulations submitted for inclusion in the SIP, including the requirement at CAA section 110(c)(2)(A) that submitted regulations be clear and legally enforceable.

For the reasons stated above and explained further in the TSD for this action, we find that the submitted rules generally satisfy the applicable CAA and regulatory requirements for NSR permit programs under CAA section 110(a)(2)(A) and part D of title I of the Act and other applicable requirements, subject to the exceptions noted below where the EPA has identified deficiencies. This submittal also corrects the deficiencies described in our 2023 NSR Action. If we finalize this action as proposed, our action will resolve the limited disapproval of Rule 2201 and will be codified through revisions to 40 CFR 52.220 (Identification of plan—in part). Because Rules 1020, 2020, and 2201 are not fully consistent with these requirements, we are proposing a limited approval and limited disapproval of the rules under CAA sections 110(k)(3) and 301(a). The specific rule provisions that do not meet the evaluation criteria are summarized in the following section and described in more detail in the TSD included in the docket for this proposed action.

We are concurrently making an interim final determination to defer CAA section 179 sanctions associated with the 2023 NSR Action's limited disapproval of Rule 2201. Consistent with our order of sanction regulations,[3] this determination is based on this proposal to approve SIP revisions from the District that resolve the deficiencies that were the basis of our prior limited disapproval that triggered sanctions under section 179 of the CAA.

C. What are the rule deficiencies?

The following provisions of Rules 1020, 2020, and 2201 do not satisfy the requirements of section 110 and/or part D of title I of the Act and prevent full approval of the rules. The District must correct the deficiencies identified in this section and resubmit the rules for the EPA's approval in a subsequent action. The EPA has identified three deficiencies in the submitted rules.

1. Rule 1020—Definitions

The definition of VOC in Rule 1020 is deficient because it does not include trans-1,1,1,4,4,4-hexafluorobut-2-ene (also known as HFO–1336mzz(E)), which is an exempt compound listed in the definition of VOC as found in 40 CFR 51.100(s)(1). In addition, on November 12, 2024, the EPA proposed to add (Z)-1-chloro-2,3,3,3-tetrafluoropropene (also known as HCFO–1224yd(Z)) to the definition of VOC as an exempt compound. The District must revise the Rule 1020 definition of VOC to match the federal definition at 40 CFR 51.100(s), including the exemptions listed at 40 CFR 51.100(s)(1).

2. Rule 2020—Exemptions

Several American Society for Testing and Materials (ASTM) test method citations provided in Rule 2020 are deficient because they do not include the revision or reissuance date of the specific ASTM methods.

3. Rule 2201—New and Modified Stationary Source Review Rule

The term ''Emission Reduction Credit'' is used in Rule 2201, but the term is not defined in the rule or in Rule 1020, ''Definitions.'' We note that the term is defined in Rule 2301—Emission Reduction Credit Banking, but this rule has not been submitted for SIP approval. Therefore, we find Rule 2201 deficient because it does not provide a definition for the term Emission Reduction Credit, and the term is a necessary component of an approvable NNSR program.

D. EPA Recommendations To Further Improve the Rules

The TSD for this action includes recommendations for the next time the District revises Rule 2201.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing a limited approval and limited disapproval of Rules 1020, 2020, and 2201. We will accept comments from the public on this proposal until February 20, 2025. If we finalize this action as proposed, this action will incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is

[3] 40 CFR 52.31.

simultaneously proposing a limited disapproval of the rules under section 110(k)(3). If finalized as proposed, our limited disapproval action would trigger an obligation on the EPA to promulgate a federal implementation plan (FIP) unless the State corrects the deficiencies, and the EPA approves the related plan revisions, within two years of the final action. Additionally, because the deficiency relates to NNSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in the San Joaquin Valley 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Neither sanction will be imposed under the CAA if the State submits and we approve, prior to the implementation of the sanctions, a SIP revision that corrects the deficiencies we identify in our final action. The EPA intends to work with the District to correct the deficiencies in a timely manner.

This action would also revise the regulatory provisions at 40 CFR 52.281(d) concerning the applicability of the visibility FIP at 40 CFR 52.28 as it pertains to California, to provide that this FIP does not apply to sources subject to review under the District's SIP-approved NNSR program. As described in more detail in the TSD for this action, we are proposing to find that Rule 2201 satisfies the visibility provisions for sources subject to the NNSR program at 40 CFR 51.307.

Note that the submitted rules have been adopted by the District, and the EPA's final limited disapproval would not prevent the local agency from enforcing them. The limited disapproval would also not prevent any portion of the rules from being incorporated by reference into the federally enforceable SIP.[4]

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the rules listed in Table 1 of this preamble. These rules implement the District's nonattainment NSR program. The EPA has made, and will continue to make, this document available electronically through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

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. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review state choices and approve those choices if they meet the minimum criteria of the Act. Accordingly, this proposed action is proposing a limited approval and limited disapproval of state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

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

B. Paperwork Reduction Act (PRA)

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

C. Regulatory Flexibility Act (RFA)

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

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Coordination With Indian Tribal Governments

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it is merely proposing a limited approval and limited disapproval of state law as meeting federal requirements. Furthermore, the EPA's Policy on Children's Health does not apply to this action.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

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

[4] Memorandum dated July 9, 1992, from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards, U.S. EPA, to EPA Regional Air Directors, Regions I–X, Subject: ''Processing of State Implementation Plan (SIP) Submittals.''

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

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 communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements Executive Order 12898 and defines EJ as, among other things, ''the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment.''

The State did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Orders 12898 and 14096 of achieving EJ for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: January 13, 2025.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2025–01220 Filed 1–17–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2024–0625; FRL–10253–01–R3]

Air Plan Disapproval; West Virginia; Regional Haze State Implementation Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove a revision to West Virginia's State Implementation Plan (SIP) submitted by the West Virginia Department of Environmental Protection (WV DEP) on August 12, 2022. The SIP was submitted to satisfy applicable requirements under the Clean Air Act (CAA) and EPA's Regional Haze Rule (RHR) for the program's second planning period. If finalized, disapproval does not start a mandatory sanctions clock. The EPA is taking this action pursuant to sections 110 and 169A of the Clean Air Act.

DATES: Written comments must be received on or before February 20, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2024–0625 at *www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Adam Yarina, U.S. Environmental Protection Agency, Region 3, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103–2852, at (215) 814–2108, or by email at *yarina.Adam@epa.gov.*

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

I. What action is the EPA proposing?

The EPA is proposing to disapprove West Virginia's Regional Haze plan for the second planning period. As required by sections 169A and 169B of the CAA, the Federal RHR at 40 CFR 51.308 calls for State and Federal agencies to work together to improve visibility in 156 national parks and wilderness areas. The rule requires the States, in coordination with the EPA, the U.S. National Parks Service (NPS), U.S. Fish and Wildlife Service (FWS), the U.S. Forest Service (USFS), and other interested parties, to develop and implement air quality protection plans to reduce the pollution that causes visibility impairment in mandatory Class I Federal areas. Visibility impairing pollutants include fine and coarse particulate matter (PM) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* sulfur dioxide (SO_2), oxides of nitrogen (NO_X), and, in some cases, volatile organic compounds (VOC) and ammonia (NH_3)). As discussed in further detail below, the EPA is proposing to find that West Virginia has submitted a Regional Haze plan that does not meet the statutory and regulatory Regional Haze requirements for the second planning period. The State's 2022 submission can be found in the docket for this action.

II. Background and Requirements for Regional Haze Plans

A. Regional Haze Background

In the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation's mandatory Class I Federal areas, which include certain national parks and wilderness areas.[1] CAA section 169A. The CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal

[1] Areas statutorily designated as mandatory Class I Federal Areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA 162(a). There are 156 mandatory Class I Areas. The list of areas to which the requirements of the visibility protection program apply is in 40 CFR part 81, subpart D.

areas which impairment results from manmade air pollution.'' CAA section 169A(a)(1). The CAA further directs the EPA to promulgate regulations to assure reasonable progress toward meeting this national goal. CAA section 169A(a)(4). On December 2, 1980, the EPA promulgated regulations to address visibility impairment in mandatory Class I Federal Areas (hereinafter referred to as ''Class I Areas'') that is ''reasonably attributable'' to a single source or small group of sources. (45 FR 80084, December 2, 1980). These regulations, codified at 40 CFR 51.300 through 51.307, represented the first phase of the EPA's efforts to address visibility impairment. In 1990, Congress added section 169B to the CAA to further address visibility impairment, specifically, impairment from Regional Haze. CAA 169B. The EPA promulgated the RHR, codified at 40 CFR 51.308,[2] on July 1, 1999. (64 FR 35714, July 1, 1999). These Regional Haze regulations are a central component of the EPA's comprehensive visibility protection program for Class I Areas.

Regional Haze is visibility impairment that is produced by a multitude of anthropogenic sources and activities which are located across a broad geographic area and that emit pollutants that impair visibility. Visibility impairing pollutants include fine and coarse PM (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* SO_2, NO_X, and, in some cases, VOC and NH_3). Fine particle precursors react in the atmosphere to form fine PM ($PM_{2.5}$), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the perception of clarity and color, as well as visible distance.[3]

To address Regional Haze visibility impairment, the 1999 RHR established an iterative planning process that requires both States in which Class I Areas are located and States ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I Area to periodically submit SIP revisions to address such impairment. CAA section 169A(b)(2);[4] see also 40 CFR 51.308(b), (f) (establishing submission dates for iterative Regional Haze SIP revisions); (64 FR 35768, July 1, 1999). Under the CAA, each SIP submission must contain ''a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal,'' CAA section 169A(b)(2)(B); the initial round of SIP submissions also had to address the statutory requirement that certain older, larger sources of visibility impairing pollutants install and operate the best available retrofit technology (BART). CAA section 169A(b)(2)(A); 40 CFR 51.308(d), (e). States' first Regional Haze SIPs were due by December 17, 2007, 40 CFR 51.308(b), with subsequent SIP submissions containing an updated long-term strategy (LTS) originally due July 31, 2018, and every ten years thereafter. (64 FR 35768, July 1, 1999). The EPA established in the 1999 RHR that all States either have Class I Areas within their borders or ''contain sources whose emissions are reasonably anticipated to contribute to Regional Haze in a Class I Area''; therefore, all States must submit Regional Haze SIPs.[5] *Id.* at 35721.

Much of the focus in the first implementation period of the Regional Haze program, which ran from 2007 through 2018, was on satisfying States' BART obligations. First implementation period SIPs were additionally required to contain a long-term strategy for making reasonable progress toward the national visibility goal, of which BART is one component. The core required elements for the first implementation period SIPs (other than BART) are laid out in 40 CFR 51.308(d). Those provisions required that States containing Class I Areas establish reasonable progress goals (RPGs) that are measured in deciviews and reflect the anticipated visibility conditions at the end of the implementation period including from implementation of States' long-term strategy. The first planning period RPGs were required to provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period. In establishing the RPGs for any Class I Area in a State, the State was required to consider four statutory factors: the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources. CAA section 169A(g)(1); 40 CFR 51.308(d)(1).

States were also required to calculate baseline (using the five-year period of 2000–2004) and natural visibility conditions (*i.e.,* visibility conditions without anthropogenic visibility impairment) for each Class I Area, and to calculate the linear rate of progress needed to attain natural visibility conditions, assuming a starting point of baseline visibility conditions in 2004 and ending with natural conditions in 2064. This linear interpolation is known as the uniform rate of progress (URP) and is used as a tracking metric to help States assess the amount of progress they are making towards the national visibility goal over time in each Class I Area.[6] 40 CFR 51.308(d)(1)(i)(B), (d)(2). The 1999 RHR also provided that States' long-term strategy must include the ''enforceable emissions limitations, compliance, schedules, and other

[2] In addition to the generally applicable Regional Haze provisions at 40 CFR 51.308, the EPA also promulgated regulations specific to addressing Regional Haze visibility impairment in Class I Areas on the Colorado Plateau at 40 CFR 51.309. The latter regulations are applicable only for specific jurisdictions' Regional Haze plans submitted no later than December 17, 2007, and thus are not relevant here.

[3] There are several ways to measure the amount of visibility impairment, *i.e.,* haze. One such measurement is the deciview, which is the principal metric used by the RHR. Under many circumstances, a change in one deciview will be perceived by the human eye to be the same on both clear and hazy days. The deciview is unitless. It is proportional to the logarithm of the atmospheric extinction of light, which is the perceived dimming of light due to its being scattered and absorbed as it passes through the atmosphere. Atmospheric light extinction (bext.) is a metric used for expressing visibility and is measured in inverse megameters (Mm–1). The EPA's Guidance on Regional Haze State Implementation Plans for the Second Implementation Period (''2019 Guidance'') offers the flexibility for the use of light extinction in certain cases. Light extinction can be simpler to use in calculations than deciviews, since it is not a logarithmic function. See, *e.g.,* 2019 Guidance at 16, 19, *www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period,*The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019). The formula for the deciview is 10 ln (bext.)/10 Mm–1). 40 CFR 51.301.

[4] The RHR expresses the statutory requirement for states to submit plans addressing out-of-state Class I Areas by providing that states must address visibility impairment ''in each mandatory Class I Federal Area located outside the State that may be affected by emissions from within the State.'' 40 CFR 51.308(d), (f).

[5] In addition to each of the fifty states, the EPA also concluded that the Virgin Islands and District of Columbia must also submit Regional Haze SIPs because they either contain a Class I Area or contain sources whose emissions are reasonably anticipated to contribute Regional Haze in a Class I Area. See 40 CFR 51.300(b), (d)(3).

[6] The EPA established the URP framework in the 1999 RHR to provide ''an equitable analytical approach'' to assessing the rate of visibility improvement at Class I Areas across the country. The start point for the URP analysis is 2004 and the endpoint was calculated based on the amount of visibility improvement that was anticipated to result from implementation of existing CAA programs over the period from the mid-1990s to approximately 2005. Assuming this rate of progress would continue into the future, the EPA determined that natural visibility conditions would be reached in 60 years, or 2064 (60 years from the baseline starting point of 2004). However, the EPA did not establish 2064 as the year by which the national goal must be reached. 64 FR 35731–32, July 1, 1999. That is, the URP and the 2064 date are not enforceable targets, but rather are tools that ''allow for analytical comparisons between the rate of progress that would be achieved by the state's chosen set of control measures and the URP.'' (82 FR 3078, 3084, January 10, 2017).

measures as necessary to achieve the reasonable progress goals.'' 40 CFR 51.308(d)(3). In establishing their long-term strategy, States are required to consult with other States that also contribute to visibility impairment in a given Class I Area and include all measures necessary to obtain their shares of the emission reductions needed to meet the RPGs. 40 CFR 51.308(d)(3)(i) and (ii). Section 51.308(d) also contains seven additional factors States must consider in formulating their long-term strategy, 40 CFR 51.308(d)(3)(v), as well as provisions governing monitoring and other implementation plan requirements. 40 CFR 51.308(d)(4). Finally, the 1999 RHR required States to submit periodic progress reports—SIP revisions due every five years that contain information on States' implementation of their Regional Haze plans and an assessment of whether anything additional is needed to make reasonable progress, see 40 CFR 51.308(g), (h)—and to consult with the Federal Land Manager(s)[7] (FLMs) responsible for each Class I Area according to the requirements in CAA section 169A(d) and 40 CFR 51.308(i).

On January 10, 2017, the EPA promulgated revisions to the RHR, (82 FR 3078, January 10, 2017), that apply for the second and subsequent implementation periods. The 2017 rulemaking made several changes to the requirements for Regional Haze SIPs to clarify States' obligations and streamline certain Regional Haze requirements. The revisions to the Regional Haze program for the second and subsequent implementation periods focused on the requirement that States' SIPs contain long-term strategies for making reasonable progress towards the national visibility goal. The reasonable progress requirements as revised in the 2017 rulemaking (referred to here as the 2017 RHR Revisions) are codified at 40 CFR 51.308(f). Among other changes, the 2017 RHR Revisions adjusted the deadline for States to submit their second implementation period SIPs from July 31, 2018, to July 31, 2021, clarified the order of analysis and the relationship between RPGs and the long-term strategy, and focused on making visibility improvements on the days with the most anthropogenic visibility impairment, as opposed to the days with the most visibility impairment overall. The EPA also revised requirements of the visibility protection program related to periodic progress reports and FLM consultation. The specific requirements applicable to second implementation period Regional Haze SIP submissions are addressed in detail below.

The EPA provided guidance to the States for their second implementation period SIP submissions in the preamble to the 2017 RHR Revisions as well as in subsequent, stand-alone guidance documents. In August 2019, the EPA issued ''Guidance on Regional Haze State Implementation Plans for the Second Implementation Period'' (''2019 Guidance'').[8] On July 8, 2021, the EPA issued a memorandum containing ''Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period'' (''2021 Clarifications Memo'').[9] Additionally, the EPA further clarified the recommended procedures for processing ambient visibility data and optionally adjusting the URP to account for international anthropogenic and prescribed fire impacts in two technical guidance documents: the December 2018 ''Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program'' (''2018 Visibility Tracking Guidance''),[10] and the June 2020 ''Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program'' and associated Technical Addendum (''2020 Data Completeness Memo'').[11]

As previously explained in the 2021 Clarifications Memo, the EPA intends the second implementation period of the Regional Haze program to secure meaningful reductions in visibility impairing pollutants that build on the significant progress States have achieved to date. The Agency also recognizes that analyses regarding reasonable progress are state-specific and that, based on States' and sources' individual circumstances, what constitutes reasonable reductions in visibility impairing pollutants will vary from state-to-state. While there exist many opportunities for States to leverage both ongoing and upcoming emission reductions under other CAA programs, the Agency expects States to undertake rigorous reasonable progress analyses that identify further opportunities to advance the national visibility goal consistent with the statutory and regulatory requirements. See generally 2021 Clarifications Memo. This is consistent with Congress's determination that a visibility protection program is needed in addition to the CAA's national ambient air quality standards (NAAQS) and prevention of significant deterioration (PSD) programs, as further emission reductions may be necessary to adequately protect visibility in Class I Areas throughout the country.[12]

B. Roles of Agencies in Addressing Regional Haze

Because the air pollutants and pollution affecting visibility in Class I Areas can be transported over long distances, successful implementation of the Regional Haze program requires long-term, regional coordination among multiple jurisdictions and agencies that have responsibility for Class I Areas and the emissions that impact visibility in those Areas. In order to address Regional Haze, States need to develop strategies in coordination with one another, considering the effect of emissions from one jurisdiction on the air quality in another. Five regional planning organizations (RPOs),[13] which include representation from State and

[7] The EPA's regulations define ''Federal Land Manager'' as ''the Secretary of the department with authority over the Federal Class I Area (or the Secretary's designee) or, with respect to Roosevelt-Campobello International Park, the Chairman of the Roosevelt-Campobello International Park Commission.'' 40 CFR 51.301.

[8] Guidance on Regional Haze State Implementation Plans for the Second Implementation Period, *https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period,* EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019).

[9] Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period, *https://www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf,* EPA Office of Air Quality Planning and Standards, Research Triangle Park (July 8, 2021).

[10] Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. *https://www.epa.gov/visibility/technical-guidance-tracking-visibility-progress-second-implementation-period-regional,* EPA Office of Air Quality Planning and Standards, Research Triangle Park. (December 20, 2018).

[11] Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program, *www.epa.gov/visibility/memo-and-technical-addendum-ambient-data-usage-and-completeness-regional-haze-program.* EPA Office of Air Quality Planning and Standards, Research Triangle Park (June 3, 2020).

[12] See, *e.g.,* H.R. Rep No. 95–294 at 205 (''In determining how to best remedy the growing visibility problem in these areas of great scenic importance, the committee realizes that as a matter of equity, the national ambient air quality standards cannot be revised to adequately protect visibility in all areas of the country.''), (''the mandatory Class I increments of [the PSD program] do not adequately protect visibility in Class I Areas'').

[13] RPOs are sometimes also referred to as ''multi-jurisdictional organizations,'' or MJOs. For the purposes of this document, the terms RPO and MJO are synonymous.

tribal governments, the EPA, and FLMs, were developed in the lead-up to the first implementation period to address Regional Haze. RPOs evaluate technical information to better understand how emissions from State and tribal land impact Class I Areas across the country, pursue the development of regional strategies to reduce emissions of PM and other pollutants leading to Regional Haze, and help States meet the consultation requirements of the RHR.

The Visibility Improvement State and Tribal Association of the Southeast (VISTAS), one of the five RPOs described above, is a collaborative effort of State governments, tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Southeastern region of the United States. Member States and tribes include Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, the Eastern Band of Cherokee Indians, and Knox County, Tennessee (representing the 17 Southeastern local air agencies). The Federal partner members of VISTAS are the EPA, NPS, FWS, and USFS.

III. Requirements for Regional Haze Plans for the Second Implementation Period

Under the CAA and THE EPA's regulations, all 50 States, the District of Columbia, and the U.S. Virgin Islands are required to submit regional haze SIPs satisfying the applicable requirements for the second implementation period of the regional haze program by July 31, 2021. Each State's SIP must contain a long-term strategy for making reasonable progress toward meeting the national goal of remedying any existing and preventing any future anthropogenic visibility impairment in Class I areas. CAA 169A(b)(2)(B). To this end, 40 CFR 51.308(f) lays out the process by which States determine what constitutes their long-term strategy, with the order of the requirements in 40 CFR 51.308(f)(1) through (3) generally mirroring the order of the steps in the reasonable progress analysis [14] and 40 CFR 51.308(f)(4) through (6) containing additional, related requirements. Broadly speaking, a State first must identify the Class I areas within the State and determine the Class I areas outside the State in which visibility may be affected by emissions from the State. These are the Class I areas that must be addressed in the State's long-term strategy. See 40 CFR 51.308(f) and (f)(2). For each Class I area within its borders, a State must then calculate the baseline, current, and natural visibility conditions for that area, as well as the visibility improvement made to date and the URP. See 40 CFR 51.308(f)(1). Each State having a Class I area and/or emissions that may affect visibility in a Class I area must then develop a long-term strategy that includes the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress in such areas. A reasonable progress determination is based on applying the four factors in CAA section 169A(g)(1) to sources of visibility-impairing pollutants that the State has selected to assess for controls for the second implementation period. Additionally, as further explained below, the RHR at 40 CFR 51.3108(f)(2)(iv) separately provides five ''additional factors'' [15] that States must consider in developing their long-term strategy. See 40 CFR 51.308(f)(2). A State evaluates potential emission reduction measures for those selected sources and determines which are necessary to make reasonable progress. Those measures are then incorporated into the State's long-term strategy. After a State has developed its long-term strategy, it then establishes RPGs for each Class I area within its borders by modeling the visibility impacts of all reasonable progress controls at the end of the second implementation period, *i.e.,* in 2028, as well as the impacts of other requirements of the CAA. The RPGs include reasonable progress controls not only for sources in the State in which the Class I area is located, but also for sources in other States that contribute to visibility impairment in that area. The RPGs are then compared to the baseline visibility conditions and the URP to ensure that progress is being made towards the statutory goal of preventing any future and remedying any existing anthropogenic visibility impairment in Class I areas. 40 CFR 51.308(f)(2) and (3).

In addition to satisfying the requirements at 40 CFR 51.308(f) related to reasonable progress, the regional haze SIP submissions revisions due by July 31, 2021, for the second implementation period must address the requirements in 40 CFR 51.308(g)(1) through (5) pertaining to periodic reports describing progress towards the RPGs, 40 CFR 51.308(f)(5), as well as requirements for FLM consultation that apply to all visibility protection SIPs and SIP revisions. 40 CFR 51.308(i).

A State must submit its regional haze SIP and subsequent SIP revisions to the EPA according to the requirements applicable to all SIP revisions under the CAA and the EPA's regulations. See CAA 169(b)(2); CAA 110(a). Upon EPA approval, a SIP is enforceable by the Agency and the public under the CAA. If the EPA finds that a State fails to make a required SIP revision, or if the EPA finds that a State's SIP is incomplete or disapproves the SIP, the Agency must promulgate a Federal implementation plan (FIP) that satisfies the applicable requirements. CAA 110(c)(1).

A. Identification of Class I Areas

The first step in developing a regional haze SIP is for a State to determine which Class I areas, in addition to those within its borders, ''may be affected'' by emissions from within the State. In the 1999 RHR, the EPA determined that all States contribute to visibility impairment in at least one Class I area, 64 FR 35720–22, July 1, 1999, and explained that the statute and regulations lay out an ''extremely low triggering threshold'' for determining ''whether States should be required to engage in air quality planning and analysis as a prerequisite to determining the need for control of emissions from sources within their State.'' *Id.* at 35721.

A State must determine which Class I areas must be addressed by its SIP by evaluating the total emissions of visibility impairing pollutants from all sources within the State. While the RHR does not require this evaluation to be conducted in any particular manner, the EPA's 2019 Guidance provides recommendations for how such an assessment might be accomplished, including by, where appropriate, using the determinations previously made for the first implementation period. 2019 Guidance at 8–9. In addition, the determination of which Class I areas may be affected by a State's emissions is subject to the requirement in 40 CFR 51.308(f)(2)(iii) to ''document the technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which the State is relying to determine the emission reduction measures that are necessary to make reasonable progress in each mandatory Class I Federal area it affects.''

[14] EPA explained in the 2017 RHR Revisions that we were adopting new regulatory language in 40 CFR 51.308(f) that, unlike the structure in 51.308(d), ''tracked the actual planning sequence.'' (82 FR 3091, January 10, 2017).

[15] The five ''additional factors'' for consideration in section 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

B. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

As part of assessing whether a SIP submission for the second implementation period is providing for reasonable progress towards the national visibility goal, the RHR contains requirements in 40 CFR 51.308(f)(1) related to tracking visibility improvement over time. The requirements of this section apply only to States having Class I areas within their borders; the required calculations must be made for each such Class I area. The EPA's 2018 Visibility Tracking Guidance [16] provides recommendations to assist States in satisfying their obligations under 40 CFR 51.308(f)(1); specifically, in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP to account for the impacts of international anthropogenic emissions and prescribed fires. *See* 82 FR 3078 at 3103–05, January 10, 2017.

The RHR requires tracking of visibility conditions on two sets of days: the clearest and the most impaired days. Visibility conditions for both sets of days are expressed as the average deciview index for the relevant five-year period (the period representing baseline or current visibility conditions). The RHR provides that the relevant sets of days for visibility tracking purposes are the 20% clearest (the 20% of monitored days in a calendar year with the lowest values of the deciview index) and 20% most impaired days (the 20% of monitored days in a calendar year with the highest amounts of anthropogenic visibility impairment).[17] 40 CFR 51.301. A State must calculate visibility conditions for both the 20% clearest and 20% most impaired days for the baseline period of 2000–2004 and the most recent five-year period for which visibility monitoring data are available (representing current visibility conditions). 40 CFR 51.308(f)(1)(i) and (iii). States must also calculate natural visibility conditions for the clearest and most impaired days,[18] by estimating the conditions that would exist on those two sets of days absent anthropogenic visibility impairment. 40 CFR 51.308(f)(1)(ii). Using all these data, States must then calculate, for each Class I area, the amount of progress made since the baseline period (2000–2004) and how much improvement is left to achieve in order to reach natural visibility conditions.

Using the data for the set of most impaired days only, States must plot a line between visibility conditions in the baseline period and natural visibility conditions for each Class I area to determine the URP—the amount of visibility improvement, measured in deciviews, that would need to be achieved during each implementation period in order to achieve natural visibility conditions by the end of 2064. The URP is used in later steps of the reasonable progress analysis for informational purposes and to provide a non-enforceable benchmark against which to assess a Class I area's rate of visibility improvement.[19] Additionally, in the 2017 RHR Revisions, the EPA provided States the option of proposing to adjust the endpoint of the URP to account for impacts of anthropogenic sources outside the United States and/or impacts of certain types of wildland prescribed fires. These adjustments, which must be approved by the EPA, are intended to avoid any perception that States should compensate for impacts from international anthropogenic sources and to give States the flexibility to determine that limiting the use of wildland-prescribed fire is not necessary for reasonable progress. 82 FR 3078 at 3107 footnote 116, January 10, 2017.

The EPA's 2018 Visibility Tracking Guidance can be used to help satisfy the 40 CFR 51.308(f)(1) requirements, including in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP. In addition, the 2020 Data Completeness Memo provides recommendations on the data completeness language referenced in 40 CFR 51.308(f)(1)(i) and provides updated natural conditions estimates for each Class I area.

C. Long-Term Strategy for Regional Haze

The core component of a regional haze SIP submission is a long-term strategy that addresses regional haze in each Class I area within a State's borders and each Class I area that may be affected by emissions from the State. The long-term strategy ''must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv).'' 40 CFR 51.308(f)(2). The amount of progress that is ''reasonable progress'' is based on applying the four statutory factors in CAA section 169A(g)(1) in an evaluation of potential control options for sources of visibility impairing pollutants, which is referred to as a ''four-factor'' analysis. The outcome of that analysis is the emission reduction measures that a particular source or group of sources needs to implement in order to make reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(2)(i). Emission reduction measures that are necessary to make reasonable progress may be either new, additional control measures for a source, or they may be the existing emission reduction measures that a source is already implementing. See 2019 Guidance at 43; 2021 Clarifications Memo at 8–10. Such measures must be represented by ''enforceable emissions limitations, compliance schedules, and other measures'' (*i.e.,* any additional compliance tools) in a State's long-term strategy in its SIP. 40 CFR 51.308(f)(2).

Section 51.308(f)(2)(i) provides the requirements for the four-factor analysis. The first step of this analysis entails selecting the sources to be evaluated for emission reduction measures; to this end, the RHR requires States to consider ''major and minor stationary sources or groups of sources, mobile sources, and area sources'' of visibility impairing pollutants for potential four-factor control analysis. 40 CFR 51.308(f)(2)(i). A threshold question at this step is which visibility impairing pollutants will be analyzed. As the EPA previously explained, consistent with the first implementation period, the EPA generally expects that each State will analyze at least SO_2 and NO_X in selecting sources and determining control measures. See 2019 Guidance at 12, 2021 Clarifications Memo at 4. A State that chooses not to consider at least these two pollutants should demonstrate why such

[16] The 2018 Visibility Tracking Guidance references and relies on parts of the 2003 Tracking Guidance: ''Guidance for Tracking Progress Under the Regional Haze Rule,'' which can be found at *www3.epa.gov/ttnamti1/files/ambient/visible/tracking.pdf.*

[17] This document also refers to the 20% clearest and 20% most anthropogenically impaired days as the ''clearest'' and ''most impaired'' or ''most anthropogenically impaired'' days, respectively.

[18] The RHR at 40 CFR 51.308(f)(1)(ii) contains an error related to the requirement for calculating two sets of natural conditions values. The rule says ''most impaired days or the clearest days'' where it should say ''most impaired days and clearest days.'' This is an error that was intended to be corrected in the 2017 RHR Revisions but did not get corrected in the final rule language. This is supported by the preamble text at 82 FR 3098, January 10, 2017: ''In the final version of 40 CFR 51.308(f)(1)(ii), an occurrence of ''or'' has been corrected to ''and'' to indicate that natural visibility conditions for both the most impaired days and the clearest days must be based on available monitoring information.''

[19] Being on or below the URP is not a ''safe harbor''; *i.e.,* achieving the URP does not mean that a Class I area is making ''reasonable progress'' and does not relieve a state from using the four statutory factors to determine what level of control is needed to achieve such progress. See, *e.g.,* 82 FR 3078 at 3093, January 10, 2017.

consideration would be unreasonable. 2021 Clarifications Memo at 4.

While States have the option to analyze *all* sources, the 2019 Guidance explains that ''an analysis of control measures is not required for every source in each implementation period,'' and that ''[s]electing a set of sources for analysis of control measures in each implementation period is . . . consistent with the Regional Haze Rule, which sets up an iterative planning process and anticipates that a State may not need to analyze control measures for all its sources in a given SIP revision.'' 2019 Guidance at 9. However, given that source selection is the basis of all subsequent control determinations, a reasonable source selection process ''should be designed and conducted to ensure that source selection results in a set of pollutants and sources the evaluation of which has the potential to meaningfully reduce their contributions to visibility impairment.'' 2021 Clarifications Memo at 3.

The EPA explained in the 2021 Clarifications Memo that each State has an obligation to submit a long-term strategy that addresses the regional haze visibility impairment that results from emissions from within that State. Thus, source selection should focus on the in-state contribution to visibility impairment and be designed to capture a meaningful portion of the State's total contribution to visibility impairment in Class I areas. A State should not decline to select its largest in-state sources on the basis that there are even larger out-of-state contributors. 2021 Clarifications Memo at 4.[20]

Thus, while States have discretion to choose any source selection methodology that is reasonable, whatever choices they make should be reasonably explained. To this end, 40 CFR 51.308(f)(2)(i) requires that a State's SIP submission include ''a description of the criteria it used to determine which sources or groups of sources it evaluated.'' The technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308 (f)(2)(iii).

Once a State has selected the set of sources, the next step is to determine the emissions reduction measures for those sources that are necessary to make reasonable progress for the second implementation period.[21] This is accomplished by considering the four factors—''the costs of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.'' CAA 169A(g)(1). The EPA has explained that the four-factor analysis is an assessment of potential emission reduction measures (*i.e.,* control options) for sources; ''use of the terms 'compliance' and 'subject to such requirements' in section 169A(g)(1) strongly indicates that Congress intended the relevant determination to be the requirements with which sources would have to comply in order to satisfy the CAA's reasonable progress mandate.'' 82 FR 3078 at 3091, January 10, 2017. Thus, for each source it has selected for four-factor analysis,[22] a State must consider a ''meaningful set'' of technically feasible control options for reducing emissions of visibility impairing pollutants. *Id.* at 3088. The 2019 Guidance provides that ''[a] state must reasonably pick and justify the measures that it will consider, recognizing that there is no statutory or regulatory requirement to consider all technically feasible measures or any particular measures. A range of technically feasible measures available to reduce emissions would be one way to justify a reasonable set.'' 2019 Guidance at 29.

The EPA's 2021 Clarifications Memo provides further guidance on what constitutes a reasonable set of control options for consideration: ''A reasonable four-factor analysis will consider the full range of potentially reasonable options for reducing emissions.'' 2021 Clarifications Memo at 7. In addition to add-on controls and other retrofits (*i.e.,* new emission reduction measures for sources), The EPA explained that States should generally analyze efficiency improvements for sources' existing measures as control options in their four-factor analyses, as in many cases such improvements are reasonable given that they typically involve only additional operation and maintenance costs. Additionally, the 2021 Clarifications Memo provides that States that have assumed a higher emission rate than a source has achieved or could potentially achieve using its existing measures should also consider lower emission rates as potential control options. That is, a State should consider a source's recent actual and projected emission rates to determine if it could reasonably attain lower emission rates with its existing measures. If so, the State should analyze the lower emission rate as a control option for reducing emissions. 2021 Clarifications Memo at 7. The EPA's recommendations to analyze potential efficiency improvements and achievable lower emission rates apply to both sources that have been selected for four-factor analysis and those that have forgone a four-factor analysis on the basis of existing ''effective controls.'' See 2021 Clarifications Memo at 5, 10.

After identifying a reasonable set of potential control options for the sources it has selected, a State then collects information on the four factors with regard to each option identified. The EPA has also explained that, in addition to the four statutory factors, States have flexibility under the CAA and RHR to reasonably consider visibility benefits as an additional factor alongside the four statutory factors.[23] The 2019 Guidance provides recommendations for the types of information that can be used to characterize the four factors (with or without visibility), as well as ways in which States might reasonably consider and balance that information to determine which of the potential control options is necessary to make reasonable

[20] Similarly, in responding to comments on the 2017 RHR Revisions EPA explained that ''[a] state should not fail to address its many relatively low-impact sources merely because it only has such sources and another state has even more low-impact sources and/or some high impact sources.'' Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016) at 87–88.

[21] The CAA provides that, ''[i]n determining reasonable progress there shall be taken into consideration'' the four statutory factors. CAA 169A(g)(1). However, in addition to four-factor analyses for selected sources, groups of sources, or source categories, a state may also consider additional emission reduction measures for inclusion in its long-term strategy, *e.g.,* from other newly adopted, on-the-books, or on-the-way rules and measures for sources not selected for four-factor analysis for the second planning period.

[22] ''Each source'' or ''particular source'' is used here as shorthand. While a source-specific analysis is one way of applying the four factors, neither the statute nor the RHR requires states to evaluate individual sources. Rather, states have ''the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on state policy preferences and the specific circumstances of each state.'' 82 FR 3078 at 3088, January 10, 2017. However, not all approaches to grouping sources for four-factor analysis are necessarily reasonable; the reasonableness of grouping sources in any particular instance will depend on the circumstances and the manner in which grouping is conducted. If it is feasible to establish and enforce different requirements for sources or subgroups of sources, and if relevant factors can be quantified for those sources or subgroups, then states should make a separate reasonable progress determination for each source or subgroup. 2021 Clarifications Memo at 7–8.

[23] See, *e.g.,* Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016), Docket Number EPA–HQ–OAR–2015–0531, U.S. Environmental Protection Agency at 186; 2019 Guidance at 36–37.

progress. See 2019 Guidance at 30–36. The 2021 Clarifications Memo contains further guidance on how States can reasonably consider modeled visibility impacts or benefits in the context of a four-factor analysis. 2021 Clarifications Memo at 12–13, 14–15. Specifically, the EPA explained that while visibility can reasonably be used when comparing and choosing between multiple reasonable control options, it should not be used to summarily reject controls that are reasonable given the four statutory factors. 2021 Clarifications Memo at 13. Ultimately, while States have discretion to reasonably weigh the factors and to determine what level of control is needed, 40 CFR 51.308(f)(2)(i) provides that a State ''must include in its implementation plan a description of . . . how the four factors were taken into consideration in selecting the measure for inclusion in its long-term strategy.''

As explained previously, 40 CFR 51.308(f)(2)(i) requires States to determine the emission reduction measures for sources that are necessary to make reasonable progress by considering the four factors. Pursuant to 40 CFR 51.308(f)(2), measures that are necessary to make reasonable progress towards the national visibility goal must be included in a State's long-term strategy and in its SIP.[24] If the outcome of a four-factor analysis is a new, additional emission reduction measure for a source, that new measure is necessary to make reasonable progress towards remedying existing anthropogenic visibility impairment and must be included in the SIP. If the outcome of a four-factor analysis is that no new measures are reasonable for a source, continued implementation of the source's existing measures is generally necessary to prevent future emission increases and thus to make reasonable progress towards the second part of the national visibility goal: preventing future anthropogenic visibility impairment. See CAA 169A(a)(1). That is, when the result of a four-factor analysis is that no new measures are necessary to make reasonable progress, the source's existing measures are generally necessary to make reasonable progress and must be included in the SIP. However, there may be circumstances in which a State can demonstrate that a source's existing measures are *not* necessary to make reasonable progress. Specifically, if a State can demonstrate that a source will continue to implement its existing measures and will not increase its emission rate, it may not be necessary to have those measures in the long-term strategy in order to prevent future emission increases and future visibility impairment. The EPA's 2021 Clarifications Memo provides further explanation and guidance on how States may demonstrate that a source's existing measures are not necessary to make reasonable progress. See 2021 Clarifications Memo at 8–10. If the State can make such a demonstration, it need not include a source's existing measures in the long-term strategy or its SIP.

As with source selection, the characterization of information on each of the factors is also subject to the documentation requirement in 40 CFR 51.308(f)(2)(iii). The reasonable progress analysis, including source selection, information gathering, characterization of the four statutory factors (and potentially visibility), balancing of the four factors, and selection of the emission reduction measures that represent reasonable progress, is a technically complex exercise, but also a flexible one that provides States with bounded discretion to design and implement approaches appropriate to their circumstances. Given this flexibility, 40 CFR 51.308(f)(2)(iii) plays an important function in requiring a State to document the technical basis for its decision making so that the public and the EPA can comprehend and evaluate the information and analysis the State relied upon to determine what emission reduction measures must be in place to make reasonable progress. The technical documentation must include the modeling, monitoring, cost, engineering, and emissions information on which the State relied to determine the measures necessary to make reasonable progress. This documentation requirement can be met through the provision of and reliance on technical analyses developed through a regional planning process, so long as that process and its output has been approved by all State participants. In addition to the explicit regulatory requirement to document the technical basis of their reasonable progress determinations, States are also subject to the general principle that those determinations must be reasonably moored to the statute.[25] That is, a State's decisions about the emission reduction measures that are necessary to make reasonable progress must be consistent with the statutory goal of remedying existing and preventing future visibility impairment.

The four statutory factors (and potentially visibility) are used to determine what emission reduction measures for selected sources must be included in a State's long-term strategy for making reasonable progress. Additionally, the RHR at 40 CFR 51.308(f)(2)(iv) separately provides five ''additional factors'' [26] that States must consider in developing their long-term strategies: (1) emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to reduce the impacts of construction activities; (3) source retirement and replacement schedules; (4) basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and (5) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. The 2019 Guidance provides that a State may satisfy this requirement by considering these additional factors in the process of selecting sources for four-factor analysis, when performing that analysis, or both, and that not every one of the additional factors needs to be considered at the same stage of the process. See 2019 Guidance at 21. The EPA provided further guidance on the five additional factors in the 2021 Clarifications Memo, explaining that a State should generally not reject cost-effective and otherwise reasonable controls merely because there have been emission reductions since the first planning period owing to other ongoing air pollution control programs or merely because visibility is otherwise projected to improve at Class I areas. Additionally, States generally should not rely on these additional factors to

[24] States may choose to, but are not required to, include measures in their long-term strategies beyond just the emission reduction measures that are necessary for reasonable progress. See 2021 Clarifications Memo at 16. For example, states with smoke management programs may choose to submit their smoke management plans to EPA for inclusion in their SIPs but are not required to do so. See, *e.g.,* 82 FR 3078 at 3108–09, January 10, 2017 (requirement to consider smoke management practices and smoke management programs under 40 CFR 51.308(f)(2)(iv) does not require states to adopt such practices or programs into their SIPs, although they may elect to do so).

[25] *See Arizona ex rel. Darwin* v. *U.S. EPA*, 815 F.3d 519, 531 (9th Cir. 2016); *Nebraska* v. *U.S. EPA*, 812 F.3d 662, 668 (8th Cir. 2016); *North Dakota* v. *EPA*, 730 F.3d 750, 761 (8th Cir. 2013); *Oklahoma* v. *EPA*, 723 F.3d 1201, 1206, 1208–10 (10th Cir. 2013); cf. also *Nat'l Parks Conservation Ass'n* v. *EPA*, 803 F.3d 151, 165 (3d Cir. 2015); Alaska Dep't of Envtl. Conservation v. EPA, 540 U.S. 461, 485, 490 (2004).

[26] The five ''additional factors'' for consideration in section 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

summarily assert that the State has already made sufficient progress and, therefore, no sources need to be selected or no new controls are needed regardless of the outcome of four-factor analyses. 2021 Clarifications Memo at 13.

Because the air pollution that causes regional haze crosses State boundaries, 40 CFR 51.308(f)(2)(ii) requires a State to consult with other States that also have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area. Consultation allows for each State that impacts visibility in an area to share whatever technical information, analyses, and control determinations may be necessary to develop coordinated emission management strategies. This coordination may be managed through inter- and intra-RPO consultation and the development of regional emissions strategies; additional consultations between States outside of RPO processes may also occur. If a State, pursuant to consultation, agrees that certain measures (*e.g.,* a certain emission limitation) are necessary to make reasonable progress at a Class I area, it must include those measures in its SIP. 40 CFR 51.308(f)(2)(ii)(A). Additionally, the RHR requires that States that contribute to visibility impairment at the same Class I area consider the emission reduction measures the other contributing States have identified as being necessary to make reasonable progress for their own sources. 40 CFR 51.308(f)(2)(ii)(B). If a State has been asked to consider or adopt certain emission reduction measures, but ultimately determines those measures are not necessary to make reasonable progress, that State must document in its SIP the actions taken to resolve the disagreement. 40 CFR 51.308(f)(2)(ii)(C). The EPA will consider the technical information and explanations presented by the submitting State and the State with which it disagrees when considering whether to approve the State's SIP. See *id.;* 2019 Guidance at 53. Under all circumstances, a State must document in its SIP submission all substantive consultations with other contributing States. 40 CFR 51.308(f)(2)(ii)(C).

D. Reasonable Progress Goals

Reasonable progress goals ''measure the progress that is projected to be achieved by the control measures States have determined are necessary to make reasonable progress based on a four-factor analysis.'' 82 FR 3078 at 3091, January 10, 2017. Their primary purpose is to assist the public and the EPA in assessing the reasonableness of States' long-term strategies for making reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(3)(iii) and (iv). States in which Class I areas are located must establish two RPGs, both in deciviews—one representing visibility conditions on the clearest days and one representing visibility on the most anthropogenically impaired days—for each area within their borders. 40 CFR 51.308(f)(3)(i). The two RPGs are intended to reflect the projected impacts, on the two sets of days, of the emission reduction measures the State with the Class I area, as well as all other contributing States, have included in their long-term strategies for the second implementation period.[27] The RPGs also account for the projected impacts of implementing other CAA requirements, including non-SIP based requirements. Because RPGs are the modeled result of the measures in States' long-term strategies (as well as other measures required under the CAA), they cannot be determined before States have conducted their four-factor analyses and determined the control measures that are necessary to make reasonable progress. See 2021 Clarifications Memo at 6.

For the second implementation period, the RPGs are set for 2028. Reasonable progress goals are not enforceable targets, 40 CFR 51.308(f)(3)(iii); rather, they ''provide a way for the States to check the projected outcome of the [long-term strategy] against the goals for visibility improvement.'' 2019 Guidance at 46. While States are not legally obligated to achieve the visibility conditions described in their RPGs, 40 CFR 51.308(f)(3)(i) requires that ''[t]he long-term strategy and the reasonable progress goals must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period.'' Thus, States are required to have emission reduction measures in their long-term strategies that are projected to achieve visibility conditions on the most impaired days that are better than the baseline period and shows no degradation on the clearest days compared to the clearest days from the baseline period. The baseline period for the purpose of this comparison is the baseline visibility condition—the annual average visibility condition for the period 2000–2004. See 40 CFR 51.308(f)(1)(i), 82 FR 3078 at 3097–98, January 10, 2017.

So that RPGs may also serve as a metric for assessing the amount of progress a State is making towards the national visibility goal, the RHR requires States with Class I areas to compare the 2028 RPG for the most impaired days to the corresponding point on the URP line (representing visibility conditions in 2028 if visibility were to improve at a linear rate from conditions in the baseline period of 2000–2004 to natural visibility conditions in 2064). If the most impaired days RPG in 2028 is above the URP (*i.e.,* if visibility conditions are improving more slowly than the rate described by the URP), each State that contributes to visibility impairment in the Class I area must demonstrate, based on the four-factor analysis required under 40 CFR 51.308(f)(2)(i), that no additional emission reduction measures would be reasonable to include in its long-term strategy. 40 CFR 51.308(f)(3)(ii). To this end, 40 CFR 51.308(f)(3)(ii) requires that each State contributing to visibility impairment in a Class I area that is projected to improve more slowly than the URP provide ''a robust demonstration, including documenting the criteria used to determine which sources or groups [of] sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy.'' The 2019 Guidance provides suggestions about how such a ''robust demonstration'' might be conducted. See 2019 Guidance at 50–51.

The 2017 RHR, 2019 Guidance, and 2021 Clarifications Memo also explain that projecting an RPG that is on or below the URP based on only on-the-books and/or on-the-way control measures (*i.e.,* control measures already required or anticipated before the four-factor analysis is conducted) is not a ''safe harbor'' from the CAA's and RHR's requirement that all States must conduct a four-factor analysis to determine what emission reduction measures constitute reasonable progress. The URP is a planning metric used to gauge the amount of progress made thus far and the amount left before reaching natural visibility conditions. However, the URP is not based on consideration of the four statutory factors and therefore cannot

[27] RPGs are intended to reflect the projected impacts of the measures all contributing states include in their long-term strategies. However, due to the timing of analyses and of control determinations by other states, other on-going emissions changes, a particular state's RPGs may not reflect all control measures and emissions reductions that are expected to occur by the end of the implementation period. The 2019 Guidance provides recommendations for addressing the timing of RPG calculations when states are developing their long-term strategies on disparate schedules, as well as for adjusting RPGs using a post-modeling approach. 2019 Guidance at 47–48.

answer the question of whether the amount of progress being made in any particular implementation period is ''reasonable progress.'' See 82 FR 3078 at 3093, 3099–3100, January 10, 2017; 2019 Guidance at 22; 2021 Clarifications Memo at 15–16.

E. Monitoring Strategy and Other State Implementation Plan Requirements

Section 51.308(f)(6) requires States to have certain strategies and elements in place for assessing and reporting on visibility. Individual requirements under this section apply either to States with Class I areas within their borders, States with no Class I areas but that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area, or both. A State with Class I areas within its borders must submit with its SIP revision a monitoring strategy for measuring, characterizing, and reporting regional haze visibility impairment that is representative of all Class I areas within the State. SIP revisions for such States must also provide for the establishment of any additional monitoring sites or equipment needed to assess visibility conditions in Class I areas, as well as reporting of all visibility monitoring data to the EPA at least annually. Compliance with the monitoring strategy requirement may be met through a State's participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring network, which is used to measure visibility impairment caused by air pollution at the 156 Class I areas covered by the visibility program. 40 CFR 51.308(f)(6), (f)(6)(i) and (iv). The IMPROVE monitoring data is used to determine the 20% most anthropogenically impaired and 20% clearest sets of days every year at each Class I area and tracks visibility impairment over time.

All States' SIPs must provide for procedures by which monitoring data and other information are used to determine the contribution of emissions from within the State to regional haze visibility impairment in affected Class I areas. 40 CFR 51.308(f)(6)(ii) and (iii). Section 51.308(f)(6)(v) further requires that all States' SIPs provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area; the inventory must include emissions for the most recent year for which data are available and estimates of future projected emissions. States must also include commitments to update their inventories periodically. The inventories themselves do not need to be included as elements in the SIP and are not subject to EPA review as part of the Agency's evaluation of a SIP revision.[28] All States' SIPs must also provide for any other elements, including reporting, recordkeeping, and other measures, that are necessary for States to assess and report on visibility. 40 CFR 51.308(f)(6)(vi). Per the 2019 Guidance, a State may note in its regional haze SIP that its compliance with the Air Emissions Reporting Rule (AERR) in 40 CFR part 51, subpart A satisfies the requirement to provide for an emissions inventory for the most recent year for which data are available. To satisfy the requirement to provide estimates of future projected emissions, a State may explain in its SIP how projected emissions were developed for use in establishing RPGs for its own and nearby Class I areas.[29]

Separate from the requirements related to monitoring for regional haze purposes under 40 CFR 51.308(f)(6), the RHR also contains a requirement at 40 CFR 51.308(f)(4) related to any additional monitoring that may be needed to address visibility impairment in Class I areas from a single source or a small group of sources. This is called ''reasonably attributable visibility impairment.'' [30] Under this provision, if the EPA or the FLM of an affected Class I area has advised a State that additional monitoring is needed to assess reasonably attributable visibility impairment, the State must include in its SIP revision for the second implementation period an appropriate strategy for evaluating such impairment.

F. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires a State's regional haze SIP revision to address the requirements of 40 CFR 51.308(g)(1) through (5) so that the plan revision due in 2021 will serve also as a progress report addressing the period since submission of the progress report for the first implementation period. The regional haze progress report requirement is designed to inform the public and the EPA about a State's implementation of its existing long-term strategy and whether such implementation is in fact resulting in the expected visibility improvement. See 81 FR 26942, 26950 (May 4, 2016), (82 FR 3078 at 3119, January 10, 2017). To this end, every State's SIP revision for the second implementation period is required to describe the status of implementation of all measures included in the State's long-term strategy, including BART and reasonable progress emission reduction measures from the first implementation period, and the resulting emissions reductions. 40 CFR 51.308(g)(1) and (2).

A core component of the progress report requirements is an assessment of changes in visibility conditions on the clearest and most impaired days. For second implementation period progress reports, 40 CFR 51.308(g)(3) requires States with Class I areas within their borders to first determine current visibility conditions for each area on the most impaired and clearest days, 40 CFR 51.308(g)(3)(i)(B), and then to calculate the difference between those current conditions and baseline (2000–2004) visibility conditions in order to assess progress made to date. See 40 CFR 51.308(g)(3)(ii)(B). States must also assess the changes in visibility impairment for the most impaired and clearest days since they submitted their first implementation period progress reports. See 40 CFR 51.308(g)(3)(iii)(B) and (f)(5). Since different States submitted their first implementation period progress reports at different times, the starting point for this assessment will vary state by state.

Similarly, States must provide analyses tracking the change in emissions of pollutants contributing to visibility impairment from all sources and activities within the State over the period since they submitted their first implementation period progress reports. See 40 CFR 51.308(f)(5) and (g)(4). Changes in emissions should be identified by the type of source or activity. Section 51.308(g)(5) also addresses changes in emissions since the period addressed by the previous progress report and requires States' SIP revisions to include an assessment of any significant changes in anthropogenic emissions within or outside the State. This assessment must include an explanation of whether these changes in emissions were anticipated and whether they have limited or impeded progress in reducing emissions and improving visibility relative to what the State projected based on its long-term strategy for the first implementation period.

G. Requirements for State and Federal Land Manager Coordination

Clean Air Act section 169A(d) requires that before a State holds a

[28] See ''Step 8: Additional requirements for regional haze SIPs'' in 2019 Regional Haze Guidance at 55.

[29] *Id.*

[30] EPA's visibility protection regulations define ''reasonably attributable visibility impairment'' as ''visibility impairment that is caused by the emission of air pollutants from one, or a small number of sources.'' 40 CFR 51.301.

public hearing on a proposed regional haze SIP revision, it must consult with the appropriate FLM or FLMs; pursuant to that consultation, the State must include a summary of the FLMs' conclusions and recommendations in the notice to the public. Consistent with this statutory requirement, the RHR also requires that States ''provide the [FLM] with an opportunity for consultation, in person and at a point early enough in the State's policy analyses of its long-term strategy emission reduction obligation so that information and recommendations provided by the [FLM] can meaningfully inform the State's decisions on the long-term strategy.'' 40 CFR 51.308(i)(2). Consultation that occurs 120 days prior to any public hearing or public comment opportunity will be deemed ''early enough,'' but the RHR provides that in any event the opportunity for consultation must be provided at least 60 days before a public hearing or comment opportunity. This consultation must include the opportunity for the FLMs to discuss their assessment of visibility impairment in any Class I area and their recommendations on the development and implementation of strategies to address such impairment. 40 CFR 51.308(i)(2). In order for the EPA to evaluate whether FLM consultation meeting the requirements of the RHR has occurred, the SIP submission should include documentation of the timing and content of such consultation. The SIP revision submitted to the EPA must also describe how the State addressed any comments provided by the FLMs. 40 CFR 51.308(i)(3). Finally, a SIP revision must provide procedures for continuing consultation between the State and FLMs regarding the State's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas. 40 CFR 51.308(i)(4).

IV. EPA's Evaluation of West Virginia's Regional Haze Submission for the Second Implementation Period

A. Background on West Virginia's First Implementation Period SIP Submission

West Virginia submitted its Regional Haze SIP for the first implementation period to the EPA on June 18, 2008. The EPA issued a limited approval and limited disapproval of West Virginia's first implementation period Regional Haze SIP submission on March 23, 2012 (77 FR 16937) because, while West Virginia's SIP revision, as a whole, strengthened the West Virginia SIP, deficiencies in the State's June 2008 regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) to the EPA of the Clean Air Interstate Rule (CAIR) necessitated a limited disapproval of these aspects of the State's SIP submittal. The EPA subsequently converted this limited approval/limited disapproval of West Virginia's regional haze SIP to a full approval on September 24, 2018, (83 FR 48249) after West Virginia submitted a revision to its Regional Haze SIP to change its reliance from CAIR to the Cross-State Air Pollution Rule (CSAPR) for the purpose of meeting BART for regional haze and addressing reasonable progress requirements. The requirements for Regional Haze SIPs for the first implementation period are contained in 40 CFR 51.308(d) and (e). Pursuant to 40 CFR 51.308(g), West Virginia was also responsible for submitting a five-year progress report as a SIP revision for the first implementation period, which it did on April 30, 2013. The EPA approved the progress report into West Virginia's SIP on June 5, 2015 (80 FR 32019).

B. West Virginia's Second Implementation Period SIP Submission and the EPA's Evaluation

In accordance with CAA sections 169A and the RHR at 40 CFR 51.308(f), (g), and (i), on August 12, 2022, WV DEP submitted a revision to West Virginia's SIP to address its Regional Haze obligations for the second implementation period, which runs through 2028. West Virginia made its 2022 Regional Haze SIP submission available for public comment on November 5, 2021. West Virginia received and responded to public comments and included both the comments and responses to those comments in its submission.

The following sections describe West Virginia's SIP submission. This document also contains the EPA's evaluation of West Virginia's submission against the applicable requirements of the CAA and RHR for the second implementation period of the Regional Haze program.

C. Identification of Class I Areas

Section 169A(b)(2) of the CAA requires each State in which any Class I Area is located or ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I Area to have a plan for making reasonable progress toward the national visibility goal. The RHR implements this statutory requirement at 40 CFR 51.308(f), which provides that each State's plan ''must address Regional Haze in each mandatory Class I Federal Area located within the State and in each mandatory Class I Federal Area located outside the State that may be affected by emissions from within the State,'' and (f)(2), which requires each State's plan to include a long-term strategy that addresses Regional Haze in such Class I Areas.

The EPA explained in the 1999 RHR preamble that the CAA section 169A(b)(2) requirement that States submit SIPs to address visibility impairment establishes ''an 'extremely low triggering threshold' in determining which States should submit SIPs for regional haze.'' 64 FR 35721, July 1, 1999. In concluding that each of the contiguous 48 States and the District of Columbia meet this threshold,[31] the EPA relied on ''a large body of evidence demonstrat[ing] that long-range transport of fine PM contributes to regional haze,'' *id.,* including modeling studies that ''preliminarily demonstrated that each State not having a Class I Area had emissions contributing to impairment in at least one downwind Class I Area.'' *Id.* at 35722. In addition to the technical evidence supporting a conclusion that each State contributes to existing visibility impairment, the EPA also explained that the second half of the national visibility goal—preventing *future* visibility impairment—requires having a framework in place to address future growth in visibility-impairing emissions and makes it inappropriate to ''establish criteria for excluding States or geographic areas from consideration as potential contributors to regional haze visibility impairment.'' *Id.* at 35721. Thus, the EPA concluded that the agency's ''statutory authority and the scientific evidence are sufficient to require all States to develop regional haze SIPs to ensure the prevention of any future impairment of visibility, and to conduct further analyses to determine whether additional control measures are needed to ensure reasonable progress in remedying existing impairment in downwind Class I Areas.'' *Id.* at 35722. The EPA's 2017 revisions to the RHR did not disturb this conclusion. See 82 FR 3094.

To address 40 CFR 51.308(f), WV DEP identified Class I areas within West

[31] The EPA determined that ''there is more than sufficient evidence to support our conclusion that emissions from each of the 48 contiguous states and the District of Columba may reasonably be anticipated to cause or contribute to visibility impairment in a Class I Area.'' 64 FR 35721, July 1, 1999 . Hawaii, Alaska, and the U.S. Virgin Islands must also submit Regional Haze SIPs because they contain Class I Areas.

Virginia and out-of-state Class I areas downwind of West Virginia that were affected by West Virginia statewide emissions of visibility impairing pollutants. West Virginia has two mandatory Class I areas within its borders: Dolly Sods Wilderness Area (Dolly Sods) and Otter Creek Wilderness Area (Otter Creek). Out-of-state Class I Areas affected by West Virginia included Acadia National Park (Maine), James River Face Wilderness Area (Virginia), Lye Brook Wilderness Area (Vermont), Moosehorn Wilderness Area (Maine), Roosevelt Campobello International Park (Maine/New Brunswick), Shenandoah National Park (Virginia), and Swanquarter Wilderness Area (North Carolina).

West Virginia, like other VISTAS States, implemented a two-step process to select sources contributing to visibility impairment in Class I areas within and outside the State. West Virginia presented the results of Particulate Matter Source Apportionment Technology (PSAT) [32] modeling that VISTAS conducted to estimate the projected impact of statewide SO_2 and NO_X emissions across all emissions sectors in 2028 on total light extinction for the 20 percent most impaired days in all Class I areas in the VISTAS modeling domain.[33] PSAT results were used to calculate the percent contribution of each tagged facility to the total sulfate and nitrate point source (EGU + non-EGU) contribution at each Class I area; more details of the PSAT analysis can be found in Appendix E–7b of WV DEP's SIP submittal. West Virginia also relied on facility-level SO_2 and NO_X Area of Influence (AOI) analyses [34] for each Class I area to assess relative visibility impacts from each facility.[35]

WV DEP concluded that sources and emissions within the State contribute to visibility impairment at seven out-of-state Class I Areas and took part in the emission control strategy consultation process as a member of VISTAS. WV DEP also included analyses of visibility impairing pollutant emissions and visibility impacts from other RPOs and States, and their impact on Class I Areas within VISTAS.[36] From these analyses, WV DEP concluded that ''sulfate will generally be a much larger contributor to visibility impairment in 2028 at VISTAS mandatory Federal Class I areas than nitrates'' and, that ''emissions from other planning organizations . . . generally have higher contributions to 2028 visibility impairment at mandatory Federal Class I areas in VISTAS than the emissions from the home State.'' [37] As stated previously, the threshold for visibility impact on Class I Areas is low. Therefore, a supposedly small visibility impact on any of the Class I Areas identified by WV DEP as being impacted by its emissions is sufficient to trigger the regional haze requirements to evaluate sources for control measures considering the four factors.

D. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

Section 51.308(f)(1) requires states to determine the following for ''each mandatory Class I Federal Area located within the State'': baseline visibility conditions for the most impaired and clearest days, natural visibility conditions for the most impaired and clearest days, progress to date for the most impaired and clearest days, the differences between current visibility conditions and natural visibility conditions, and the URP. This section also provides the option for States to propose adjustments to the URP line for a Class I Area to account for visibility impacts from anthropogenic sources outside the United States and/or the impacts from wildland prescribed fires that were conducted for certain, specified objectives. 40 CFR 51.308(f)(1)(vi)(B). WV DEP included this information in sections 2, 3, and 7 of its Regional Haze SIP submittal for the second planning period.

In its submittal, WV DEP determines and presents the baseline, natural, and current visibility conditions as well as the differences between these for the 20 percent most anthropogenically impaired days and the 20 percent clearest days for the State's two Class I Areas, as required by the RHR. Specifically, WV DEP included the baseline visibility conditions (2000–2004) in table 2–3, current visibility conditions (2014–2018) in table 2–5, and natural visibility conditions in table 2–2 for the 20 percent clearest and 20 percent most impaired days in each VISTAS Class I area in deciviews, including those in West Virginia. WV DEP also included the actual progress made in deciviews toward natural visibility conditions to date since the baseline period (current minus baseline), and the additional progress needed to reach natural visibility conditions from current conditions (natural minus current) in table 2–6 (for the 20 percent most impaired days) and table 2–7 (for the 20 percent clearest days) for VISTAS Class I areas, including those in West Virginia.

Additionally, Figure 3–1 of WV DEP's submittal provides the URP glide path for the 20 percent most impaired days for Dolly Sods. The URP shown in Figure 3–1 for Dolly Sods is considered representative of Otter Creek.[38] The URPs were developed by the State using EPA guidance [39] and used data collected from the IMPROVE monitoring sites.

However, as set forth later in this NPRM, because the EPA is proposing to disapprove West Virginia's Regional Haze plan for the second planning period due to deficiencies in the overall submittal, the EPA takes no position on whether the analysis described in section D meets the requirements of the Clean Air Act.

[32] PSAT is Particulate Matter Source Apportionment Technology, which is an option in the photochemical visibility impact modeling performed by VISTAS that is a methodology to track the fate of both primary and secondary PM. PSAT allows emissions to be tracked (''tagged'') for individual facilities as well as various combinations of sectors and geographic areas (*e.g.,* by state). The PSAT results provide the modeled contribution of each of the tagged sources or groups of sources to the total visibility impacts.

[33] West Virginia did not include primary PM (directly emitted) data in this analysis because the PSAT analyses performed by VISTAS tagged statewide emissions of SO_2 and NO_X and did not tag primary total PM emissions in the analysis after concluding that emissions of the PM precursors SO_2 and NO_X, particularly from point sources, are projected to have the largest impact on visibility impairment in 2028 and that SO_2 and NO_X are the most significant visibility impairing pollutants from controllable anthropogenic sources.

[34] States often use an AOI analysis to help identify the areas and sources most likely contributing to poor visibility in Class I areas. The AOI analysis involves running a backward trajectory model to determine the origin of the air parcels affecting visibility, which is then combined with emissions data to determine the sources or source sectors most likely contributing to pollutant emissions. For more information on AOI analyses, see Appendix D of WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period.

[35] See Section 7.5, ''Area of Influence Analyses for West Virginia Class I Areas'' of WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period.

[36] See Section 7.2.3, ''Projected VISTAS 2028 Emissions Inventory'', Section 7.2.5, ''2028 Visibility Projection Results'', and Section 7.4, ''Relative Contributions to Visibility Impairment: Pollutants, Source Categories, and Geographic Areas'' of WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period.

[37] See Section 7.4, ''Relative Contributions to Visibility Impairment: Pollutants, Source Categories, and Geographic Areas'' of WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period.

[38] Otter Creek has no IMPROVE monitor. Visibility at Otter Creek is assumed to be the same as the nearest Class I area monitor located at Dolly Sods.

[39] *www.epa.gov/sites/default/files/2018-12/documents/technical_guidance_tracking_visibility_progress.pdf and https://www.epa.gov/sites/default/files/2020-06/documents/memo_data_for_regional_haze_technical_addendum.pdf.*

E. Long-Term Strategy for Regional Haze

Each State having a Class I Area within its borders or emissions that may affect visibility in a Class I Area must develop a long-term strategy for making reasonable progress towards the national visibility goal. CAA section 169A(b)(2)(B). As explained in the Background section of this document, reasonable progress is achieved when all States contributing to visibility impairment in a Class I Area are implementing the measures determined—through application of the four statutory factors to sources of visibility impairing pollutants—to be necessary to make reasonable progress. 40 CFR 51.308(f)(2)(i). Each State's long-term strategy must include the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress. 40 CFR 51.308(f)(2). All new (*i.e.,* additional) measures that are the outcome of four-factor analyses are necessary to make reasonable progress and must be in the long-term strategy. If the outcome of a four-factor analysis and other measures necessary to make reasonable progress is that no new measures are reasonable for a source, that source's existing measures are necessary to make reasonable progress, unless the State can demonstrate that the source will continue to implement those measures and will not increase its emission rate. Existing measures that are necessary to make reasonable progress must also be in the long-term strategy. In developing its long-term strategy, a State must also consider the five additional factors in 40 CFR 51.308(f)(2)(iv). As part of its reasonable progress determinations, the State must describe the criteria used to determine which sources or group of sources were evaluated (*i.e.,* subjected to four-factor analysis) for the second implementation period and how the four factors were taken into consideration in selecting the emission reduction measures for inclusion in the long-term strategy. 40 CFR 51.308(f)(2)(iii).

1. Source Selection

To determine the necessary emission reductions measures, a State must first select the sources to evaluate. As stated in the Background section of this document, source selection should focus on the in-state contribution to visibility impairment and be designed to capture a meaningful portion of the State's total contribution to visibility impairment in Class I areas. WV DEP included information on the emissions impacts from numerous sources within the State on various Class I Areas. Section 7.6.1, Table 7–17 of the WV DEP submittal lists the facilities selected for PSAT tagging in Virginia and West Virginia based on an AOI visibility contribution of 0.2% or more which include thirteen facilities located in West Virginia.[40] West Virginia then decided not to select eight of those facilities for analysis of reasonable progress measures or controls.[41] The State considered a percent contribution of greater than or equal to 1.00% (individual facility contribution divided by the total sulfate and nitrate contributions from EGU + non-EGU point sources) to determine whether to select a facility for a reasonable progress analysis. West Virginia excluded seven of the eight unselected facilities in part based on a PSAT modeling result of <1.00% as well as various factors through a qualitative weight-of-the evidence approach.[42] The remaining of the unselected facilities, Grant Town Plant,[43] had a PSAT modeling result of ≥1.00% which WV DEP claimed could be scaled down to <1.00% contribution to Dolly Sods based on recent emissions data.[44] WV DEP also included discussion as to why no reasonable progress analysis is warranted for Mountaineer Plant, a ninth facility that was not tagged for PSAT modeling.[45]

After excluding eight of the thirteen facilities selected for PSAT tagging—along with Mountaineer Plant, which had not been selected for PSAT—West Virginia then selected the remaining five facilities: Harrison Power Station; Fort Martin Power Station; Pleasants Power Station; Mitchell Plant; and the John E. Amos Plant, to perform a four-factor analysis.[46] WV DEP also included in its reasonable progress discussion at section 7.8 of the SIP submittal a sixth facility—Grant Town Plant—which was initially included among the eight facilities for which WV DEP explained that no reasonable progress analysis was warranted.[47] Although the State then selected Grant Town Plant for a reasonable progress evaluation, it did not contact the facility to request such analysis giving as the reason, ''the facility is already subject to a federally enforceable Title V permit (R30–04900026–2020) that limits SO_2 emissions to less than the quantity projected to exceed the 1.00% visibility threshold of the VISTAS PSAT modeling.'' [48] Below in this document, when discussing reasonable progress and the facilities included in section 7.8 of the SIP submittal, the EPA refers to the group selected for reasonable progress analysis as ''five facilities plus Grant Town Plant'' or ''six facilities'' for ease of reference, even though it is somewhat unclear whether WV DEP's discussion of Grant Town Plant in section 7.8 of the SIP submittal is meant to be a reasonable progress analysis.[49]

Section 7.6.2, Table 7–19 of the SIP submittal contains PSAT results for the Dolly Sods Area, which includes fifteen facilities where sulfate contributions are ≥1.00% and addresses nearly 36.5% of the entire sulfate plus nitrate point source visibility impact in 2028; six of these fifteen facilities are located in West Virginia.[50] Table 7–20 contains PSAT results for the Otter Creek Wilderness Area, which includes fourteen facilities where sulfate contributions are ≥1.00% and addresses more than 34.7% of the entire sulfate plus nitrate point source visibility impact in 2028; five of these fourteen

[40] Allegheny Energy Supply Co, LLC—Harrison; American Bituminous Power—Grant Town Plant; Appalachian Power Company—John E. Amos Plant; Dominion Resources, Inc.—Mount Storm Power Station; Equitrans—Copley Run CS 70; Files Creek; Glady; Kingsford Manufacturing Company; Longview Power; Mitchell Plant; Monongahela Power Co.—Fort Martin Power; Monongahela Power Co.—Pleasants Power Station; Morgantown Energy Associates.

[41] See section 7.6.4, ''Selection of Sources for Reasonable Progress Evaluation'' of WV DEP's Regional Haze SIP submittal for the 2nd Planning Period (''section 7.6.4'' or ''section 7.6.4 of the SIP submittal'').

[42] *Id.*

[43] West Virginia refers to this facility as ''Grant Town Plant'' as well as ''Grant Town Power Plant'' in the SIP submittal.

[44] *Id.* at 182 of 257.

[45] *Id.* at 187 of 257. West Virginia's SIP submittal provided scant explanation for Mountaineer's inclusion in this group of facilities. West Virginia might have included Mountaineer because the EPA's January 5, 2022 comments submitted during the public comment period asked for ''further explanation of why the 4th largest SO_2 source in the state was not selected for a 4-factor analysis . . . .'' Appendix H–4 ''West Virginia Department of Environmental Protection Division of Air Quality Responses to EPA Region 3 Comments on the West Virginia Draft Regional Haze State Implementation Plan August 2022,'' section. 6.e.

[46] See section 7.8, ''Reasonable Progress for Individual Sources to be Included in the Long-Term Strategy'', of WV DEP's Regional Haze SIP submittal for the 2nd Planning Period (''section 7.8'' or ''section 7.8 of the SIP submittal'').

[47] *Id.* and section 7.6.4 of the SIP submittal.

[48] Section 7.8 of the SIP submittal at 197 of 257.

[49] West Virginia does not clearly explain why it included Grant Town Plant in the section 7.8 reasonable progress discussion after it already claimed that Grant Town Plant should be excluded from four-factor analysis and reasonable progress analysis in the section 7.6.4 source selection discussion whittling down the larger group of thirteen facilities tagged for PSAT modeling.

[50] Allegheny Energy Supply Co, LLC—Harrison; Monongahela Power Co—Pleasants Power Station; Kentucky Power Company—Mitchell Plant; Appalachian Power Company—John E. Amos Plant; Monongahela Power Co—Fort Martin Power; and American Bituminous Power—Grant Town Plant.

facilities are located in West Virginia.[51] The West Virginia facilities listed in tables 7–19 and 7–20 are the same as the five facilities plus Grant Town Plant in section 7.8 of the SIP submittal.

Tables 7–21 through 7–27 contain the PSAT results for the five West Virginia facilities[52] that WV DEP selected for evaluation of emissions control measures based on sulfate contributions of ≥1.00% to the following out-of-state Class I Areas: Acadia National Park (Maine), James River Face Wilderness Area (Virginia), Lye Brook Wilderness Area (Vermont), Moosehorn Wilderness Area (Maine), Roosevelt Campobello International Park (Maine/New Brunswick), Shenandoah National Park (Virginia), and Swanquarter Wilderness Area (North Carolina), respectively.

Further, WV DEP States that (1) the Allegheny Energy Supply Co LLC—Harrison facility[53] affects eight Class I areas; (2) Monongahela Power Co.—Pleasants Power Station impacts six Class I areas; (3) Mitchell Plant impacts four Class I areas; (4) Monongahela Power Co.—Fort Martin Power impacts three Class I areas; (5) Appalachian Power Company—John E. Amos Plant impacts three Class I areas; and (6) American Bituminous Power—Grant Town Plant impacts one Class I area. The full list of tagged facilities and their contributions to each Class I area can be found in Appendix E–7b of the SIP submittal. Thus, WV DEP ultimately identifies six West Virginia facilities as contributing to visibility impairment in at least one Class I Area, and five of these facilities as contributing to visibility impairment in multiple Class I Areas.[54] [55]

While the RHR does not explicitly list factors that a State must or may not consider when selecting the sources for which it will determine what control measures are necessary to make reasonable progress, a State opting to select a set of its sources to analyze must reasonably choose factors and apply them in a reasonable way given the statutory requirement to make reasonable progress towards natural visibility.[56] The 2019 Guidance provides examples of criteria a State may consider to select sources for analysis of emission control measures[57] none of which align with the types of information that West Virginia provided as justification. Given that WV DEP already performed quantitative PSAT and AOI modeling for these sources, confirming their contribution to visibility impairment at multiple in-state and out-of-state Class I areas, it is not clear based on the record presented why it is appropriate for WV DEP to rely on a qualitative weight-of-evidence reasoning, such as general claims about topography and stack height, to exclude these impacting sources from analysis under the four factors, which is what WV DEP did for eight of the thirteen facilities tagged for PSAT analysis.

2. Four-Factor Analysis and Reasonable Progress Analysis

For five of the six facilities discussed in section 7.8 of the SIP submittal, WV DEP requested that each of the facilities perform four-factor analyses to evaluate measures necessary for reasonable progress.[58] Four of these five facilities declined to provide four-factor analyses and instead claimed that such analyses were unnecessary for various reasons.[59] It is unclear whether WV DEP relied on the justifications provided by these four facilities, though WV DEP never performed its own full four-factor analysis for any of those four facilities. Only one of the five facilities—Pleasants Power Station—provided to WV DEP an engineering consultant's report titled ''Regional Haze Four-Factor SO_2 Analysis.'' [60] WV DEP included the facilities' explanations in the SIP submittal at section 7.8, and related appendices. The sixth facility discussed in section 7.8 is Grant Town Plant[61] even though WV DEP did not request from the facility a reasonable progress or four-factor analysis for Grant Town Plant because WV DEP did not believe such an analysis was warranted.[62] WV DEP then included tables of its own cost estimates[63] for scrubber replacement at six facilities—the five facilities plus Grant Town Plant—which this document discusses at section IV.E.2.c. of this document. However, as we discuss in section IV.E.2.c. of this document, these cost estimates were deficient and insufficiently documented.

a. Harrison Power Station, Grant Town Power Plant, Fort Martin Power Station, Mitchell Power Plant, and John E. Amos Power Plant

In Section 7.8, WV DEP lists a variety of reasons four of the selected facilities (Harrison Power Station, Fort Martin Power Station, Mitchell Power Plant, and John E. Amos Power Plant) provided for not performing a four-factor analysis. In the SIP submittal, WV DEP does not explicitly state that it is adopting the four facilities' reasons as its own, but WV DEP reiterates the facilities' reasons in detail and does not disavow their explanations. To the extent that WV DEP relied on this information in developing its long-term strategy, it did not analyze or evaluate the information provided by the facilities and did not adequately explain how such information was or was not being used to support WV DEP's decision not to require a full four-factor analysis of these facilities. Although it is unclear whether WV DEP is relying on the four facilities' rationales, the EPA addresses them in this NPRM. WV DEP also provided its own reasons why Grant Town Plant, which it did not request to perform a four-factor analysis but included in the reasonable progress discussion, should not be required to impose any additional measures.

[51] Allegheny Energy Supply Co, LLC—Harrison; Monongahela Power Co—Pleasants Power Station; Kentucky Power Company—Mitchell Plant; Appalachian Power Company—John E. Amos Plant; and Monongahela Power Co—Fort Martin Power.

[52] Allegheny Energy Supply Co, LLC—Harrison; Monongahela Power Co—Pleasants Power Station; Kentucky Power Company—Mitchell Plant; Appalachian Power Company—John E. Amos Plant; and Monongahela Power Co—Fort Martin Power.

[53] WV DEP sometimes refers to this facility as Monongahela Power Company—Harrison Power Station, with a Facility ID of 54033–6271711. This is the same Facility ID used for Allegheny Energy Supply Co LLC—Harrison.

[54] See Section 7.6.2, ''PSAT Contributions at West Virginia Class I Areas'' and Section 7.6.3, ''AoI versus PSAT Contributions'' of WV DEP's Regional Haze SIP submittal for the 2nd Planning Period.

[55] In its submittal, and as described in IV.E.2. of this document, West Virginia eventually ruled out additional and existing emission reduction measures as being necessary for reasonable progress for five of these sources, without conducting a full analysis of the four statutory factors of CAA 169A(g)(1) and 40 CFR 51.308(f)(2). However, for the sixth facility, Pleasants Power, which conducted a documented four-factor analysis, West Virginia did not reasonably justify its reliance on the four factors to rule out additional and existing emissions reductions measures that could be necessary for reasonable progress. See sections 7.6.4 and 7.8 of the SIP submittal.

[56] 2019 Guidance at 10.

[57] *Id.* (''Factors could include but are not limited to baseline source emissions, baseline source visibility impacts (or a surrogate metric for the impacts), the in-place emission control measures and by implication the emission reductions that are possible to achieve at the source through additional measures, the four statutory factors (to the extent they have been characterized at this point in SIP development), potential visibility benefits (also to the extent they have been characterized at this point in SIP development), and the five additional required factors listed in 40 CFR 51.308(f)(2)(iv).'')

[58] Section 7.8 of the SIP submittal at 196 of 257.

[59] *Id.* at 197–99, 201–02 of 257.

[60] Appendix G–2 to the WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period at G–2d ''Response Letter from Energy Harbor (Pleasants Station).''

[61] Section 7.8 of the SIP submittal at 197–98 of 257.

[62] See Section 7.6.4 of the SIP submittal at 182 of 257.

[63] Section 7.8, Table 7–37 ''Estimated FGD replacement costs per facility, based on a 20-year remaining life expectancy,'' and Table 7–38, ''Estimated FGD replacement costs per unit'', SIP submittal at 203–05 of 257.

For Harrison Power Station, WV DEP stated in its SIP submittal [64] that, when asked for a reasonable progress analysis, facility owner/operator Monongahela Power Company (MonPower) ''stated neither a formal SO_2 controls four-factor analysis nor an SO_2 permit limit were necessary or appropriate for Harrison for regional haze purposes for multiple reasons.'' These reasons included claims by MonPower that ''visibility impacts from the facility are presently well below the URP glide paths, proving already implemented past measures have been and continue to be successful''; that ''Harrison FGD systems demonstrated a 97.1% average removal efficiency for 2017 through 2019, which exceeds the 95% control deemed as BART by EPA''; and that ''Harrison averaged 0.16 pounds per mmBtu SO_2 emissions from 2015 through 2020 [which] is in compliance with the 0.2 pounds per mmBtu SO_2 emission limit of the MATS rule for coal-fired EGUs, which the company claims is adequate to meet the exemption outlined in the EPA's August 20, 2019 Guidance on Regional Haze State Implementation Plans for the Second Implementation Period. . . .'' [65] MonPower further claims that ''Harrison is subject to and meets the limits of the CSAPR FIP, and EPA and the courts have previously determined CSAPR is better than BART.''

For Grant Town Plant, WV DEP stated in its SIP submittal [66] that because ''the facility is already subject to a federally enforceable Title V permit (R30–04900026–2020) that limits SO_2 emissions to less than the quantity projected to exceed the 1.00% visibility threshold of the VISTAS PSAT modeling, it was determined that a reasonable progress analysis or a four-factor analysis request for Grant Town Plant was not warranted'' and that ''Grant Town maintains adequate SO_2 emissions credits from CAMD for its SO_2 emissions, and the facility is subject to the CSAPR SO_2 budget.'' WV DEP also claimed that the remaining lifespan of Grant Town Power Plant is thirteen years, or until 2035,[67] when the power purchase agreement for the facility expires, and that WV DEP does not anticipate that this power purchase agreement will be extended. WV DEP therefore concludes ''additional SO_2 controls would not be economically feasible for such a small and unique facility with a looming anticipated retirement date.'' [68] Because of the reasons previously stated, WV DEP decided to not request a four-factor analysis from Grant Town Power Plant.[69]

For Fort Martin Power Station, WV DEP included in its SIP submittal [70] the same claims that MonPower relied on for screening out Harrison Power Station from additional analysis, except that MonPower stated that ''Fort Martin averaged 0.11 pounds per mmBtu SO_2 emissions from 2015 through 2020.'' WV DEP also claimed that the remaining lifespan of Fort Martin Power Station is expected to be four years, or 2026, when WV DEP expects ''the proposed Good Neighbor CSAPR FIP would require the facility to install SCR for NOx control'' and that WV DEP does not expect the facility's owner/operator to do so.[71]

For Mitchell Power Plant, WV DEP stated in its SIP submittal [72] that, when asked for a reasonable progress analysis, facility owner/operator Kentucky Power Company (KPCo), a subsidiary of American Electric Power (AEP), responded that ''Mitchell emissions were well ahead of the uniform rate of progress goals to natural background visibility''; that ''continuing emissions reductions and retirements of coal-fired EGUs within the eastern United States, including within the AEP system, would provide for continuing progress within the planning period without the need for additional SO_2 emissions reductions from Mitchell''; that ''Mitchell already employs the most effective type of SO_2 controls available, which are designed to achieve a minimum of 98% emissions reduction''; that ''first CAIR and then CSAPR were previously determined by EPA to be better than BART, and Mitchell is in compliance with the CSAPR emissions trading program''; that ''Mitchell has always achieved the 0.2 pounds SO_2 per million Btu limit implemented by the MATS rule as a surrogate compliance emission limit, often by less than half this amount on an annual basis''; and that ''EPA's own guidance States sources which were selected for analysis in the first planning period, and which installed BART controls could be excluded from analysis for the second planning period.'' Based on these claims, KPCo concluded that no further evaluation of Mitchell nor additional SO_2 controls are necessary.

For John E. Amos Power Plant, WV DEP stated in its SIP submittal [73] that, when asked for a reasonable progress analysis, facility owner/operator Appalachian Power Company (APCo), stated that ''Amos emissions were well ahead of the uniform rate of progress goals to natural background visibility''; that continuing emissions reductions and retirements of coal-fired EGUs within the eastern United States, including within the AEP system, would provide for continuing progress within the planning period without the need for additional SO_2 emissions reductions from Amos''; that ''Amos already employs the most effective type of SO_2 controls available, which are designed to achieve a minimum of 98% emissions reduction''; that ''first CAIR and then CSAPR were previously determined by EPA to be better than BART, and Amos complies with the CSAPR emissions trading program''; that ''Amos has always achieved the 0.2 pounds SO_2 per million Btu limit implemented by the MATS rule as a surrogate compliance emission limit, often by well less than half this amount on an annual basis''; and that ''EPA's own guidance States sources which were selected for analysis in the first planning period, and which installed BART controls could be excluded from analysis for the second planning period.'' Based on these claims, APCo concluded that no further evaluation of Amos nor additional SO_2 controls are necessary.

WV DEP's rejection of reasonable progress measures for Harrison Power Station, Grant Town Plant, Fort Martin Power Station, Mitchell Power Plant, and John E. Amos Power Plant is not based on consideration of the mandatory four factors and instead appears to be based, at least in part, on the facility owners' contention that these facilities are effectively controlled via existing measures,[74] as described in

[64] Section 7.8 of the SIP submittal at 197 of 257.

[65] mmBtu, also sometimes written as MMBTU or MMBtu, refers to one million British thermal units of heat input.

[66] Section 7.8 of the SIP submittal at 197–98 of 257.

[67] West Virginia states that the remaining lifespan of Grant Town Plant lasts until 2035 at page 206 of the SIP submittal and 2036 at page 198 of the SIP submittal.

[68] Table 7–38 of the SIP submittal at 205 of 257.

[69] Section 7.8 of the SIP submittal at 197.

[70] *Id.* at 198–99 of 257.

[71] Table 7–38, SIP submittal at 205 of 257, and ''Cost Estimates for Scrubber Replacement at Facilities Selected for Four Factor Analyses'' at 206 of 257.

[72] Section 7.8 of the SIP submittal at 201 of 257.

[73] Section 7.8 of the SIP submittal at 201–02 of 257.

[74] Section 7.8 of the SIP submittal at 196–202 of 257. It is unclear if West Virginia is adopting the rationales of these facilities to justify not requiring these facilities to conduct the four-factor analysis West Virginia requested, or whether West Virginia's justification for not requiring a four-factor analysis is based solely on what it describes as West Virginia's own ''cost analyses for replacing the BART SO_2 controls at the six selected facilities with limestone forced oxidation (LFSO) scrubbers, assuming a 98% average reduction for the hypothetical new scrubbers.'' SIP Submittal at 202

Continued

the August 2019 Guidance.[75] However, if the outcome of a four-factor analysis is that no new measures are reasonable for a source, the EPA has interpreted the statute and the RHR to require that the source's existing measures are needed to prevent future visibility impairment (*i.e.,* to prevent future emission increases) and thus necessary to make reasonable progress.[76] If existing controls are determined to be necessary to make reasonable progress the existing controls must be incorporated into the SIP and made federally enforceable and permanent within the long-term strategy.[77] Furthermore, if a State does not find its existing measures necessary for reasonable progress, a State must submit a demonstration within its submittal supporting its rationale.[78] However, WV DEP did not provide any demonstration assessing the necessity of existing measures for reasonable progress; did not provide documentation for any specific existing measures such as permits, emissions limitations, or consent decrees; did not identify any existing controls to be included in the long-term strategy for the second planning period; and in the event the State found its existing controls unnecessary for reasonable progress, did not provide a demonstration supporting such a statement.[79] WV DEP also cites anticipated source retirements, *i.e.,* shutdowns (for example, Fort Martin by 2026) as reasons for not requiring new measures on screened-in sources as a result of reasonable progress analyses.[80] WV DEP also states that its estimated expected visibility improvements in its two Class I areas will be achieved via proposed or past shutdowns.[81] However, while WV DEP provides information regarding anticipated and prior shutdowns within its submittal, it also states that it ''considers all shuttered facilities which emit air pollution as necessary for reasonable progress towards the goal of minimizing anthropogenic visibility impairment at Class I areas.'' [82]

Nevertheless, WV DEP did not include the necessary documentation (*e.g.,* for sources that have recently retired, documentation that demonstrates applicable sources are unable to resume operation and/or the State has revoked the active air permits) to ensure such shutdowns are made federally enforceable and permanent within the SIP.[83] In fact, WV DEP stated that ''modifying the SIP to reflect every permit modification or facility shutdown which contributes to reasonable progress is itself not reasonable.'' [84] However, the RHR at 40 CFR 51.308(f)(2) and (3) requires that measures necessary for reasonable progress must be enforceable, documented and included in the SIP. WV DEP has not done so with respect to either existing or anticipated source shutdowns.

Furthermore, WV DEP did not explain or adequately justify the absence of existing measures for certain facilities identified in the reasonable progress discussion within its SIP submission. WV DEP presents information from four of the facilities in support of those facilities' claims that four-factor analyses and SO_2 permit limits are unnecessary (Harrison Power Station, Fort Martin Power Station, Mitchell Power Plant, John E. Amos Power Plant) because they emit at or below the Mercury and Air Toxics Standards (MATS) SO_2 limits. To support its decision, WV DEP cites page 23 of the 2019 Guidance.[85] However, while States may rely on the use of applicable SO_2 limits (such as the 0.2 lb/MMBtu MATS limit) as being necessary for reasonable progress for the second planning period, States must have adopted either permit conditions or State regulations containing the SO_2 limit(s) for the source(s) in question. Furthermore, the State must incorporate the applicable permit conditions or State regulations into the State's SIP submittal to make the conditions permanent and federally enforceable.[86] Without documentation confirming what SO_2 limits are necessary for reasonable progress, and documentation that the four sources are required to meet a federally enforceable and permanent permit condition equal to the applicable MATS SO_2 limits, West Virginia has not fulfilled its obligation under the CAA and RHR under 40 CFR 51.308(f)(2) to develop a long-term strategy containing enforceable measures that are necessary to make reasonable progress in the second planning period.

WV DEP presents justifications from the facilities regarding compliance with BART control efficiencies (Harrison Power Station, Fort Martin Power Station) and CSAPR emissions trading

of 257. EPA has addressed in this NPRM the issues raised by the facilities to the extent they may have been relied upon by West Virginia.

[75] See August 2019 Guidance at 22–25.

[76] Section 4 of the 2021 Clarifications Memo, pages 8–9. See also CAA 169A(b)(2); 40 CFR 51.308(f)(2).

[77] Section 4 of the 2021 Clarifications Memo. See also CAA 169A(b)(2); 40 CFR 51.308(f)(2). Additionally, consistent with our proposed partial disapproval of Arizona's Haze Plan (see 89 FR 47398, May 31, 2024), if a state determines no new measures are necessary for reasonable progress, the must then determine whether a source's existing measures are necessary for reasonable progress. EPA finalized partial disapproval of Arizona's Haze Plan on December 18, 2024 (see 89 FR 102744).

[78] Consistent with our proposed partial disapproval for Wyoming's Haze Plan (see 89 FR 63030, August 1, 2024), to the extent a state finds its existing measures are not necessary for reasonable progress, a state must provide a demonstration supporting their claim. EPA finalized partial disapproval of Wyoming's Haze Plan on December 2, 2024 (see 89 FR 95121). See also 2019 Guidance at 22–25.

[79] EPA is not stating that all existing measures are required to be in the SIP. As we acknowledged in the 2021 Clarifications Memo, ''there may be circumstances in which a source's existing measures are not necessary to make reasonable progress.'' However, EPA would expect that if a state believed that existing measure are not necessary for reasonable progress for the second planning period the state would ''demonstrate that a source will continue to implement its existing measures and will not increase its emission rate, it may not be necessary to require those measures under the regional haze program in order to prevent future emission increases.'' 2021 Clarifications Memo at 9. WVDEP provided no demonstration or explanation of its decision not to evaluate existing controls for these sources.

[80] ''Cost Estimates for Scrubber Replacement at Facilities Selected for Four Factor Analyses'' at 206 of 257 of the SIP submittal. Note also that as part of source selection West Virginia gives as a reason for not choosing Morgantown Energy Associates facility for reasonable progress analysis its filing of a permit application for two boiler retirements scheduled for 2020, SIP submittal at 184 of 257.

[81] West Virginia states that Pleasants Power should be placed on the deactivation list by June 1, 2023, SIP submittal 206 of 257 and uses this as the lifespan of the facility in estimating costs of replacement controls as discussed below. West Virginia also lists a number of past shutdowns for various West Virginia facilities in section 7.2.2, ''State Control Programs Included in the 2028 Projection Year.''

[82] Appendix H–4, ''West Virginia Department of Environmental Protection Division of Air Quality Responses to EPA Region 3 Comments on the West Virginia Draft Regional Haze State Implementation Plan August 2022,'' section 2, WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period.

[83] While fuel conversions are not mentioned with respect to the six sources, West Virginia describes fuel conversions for other facilities at section 7.2.2, ''State Control Programs Included in the 2028 Projection Year.'' In the body of the main SIP submittal at section 7.2.2, West Virginia neither indicates whether it is relying on these fuel conversions as measures necessary for reasonable progress in the second planning period nor does it include the necessary documentation to ensure that the emission reductions resulting from the fuel conversions are permanently and federally enforceable. However, in Appendix H–4, section 4, in responding to EPA comments, West Virginia discusses non-EGU industrial boilers being replaced with natural gas units and states that it ''considers boiler replacements at these smaller non-EGU Sources to be reasonable progress'' and that ''[f]ederally enforceable permits demonstrating these changes have been added to the SIP supporting documentation.'' EPA is unable to locate these permits in the supporting documentation appended to the SIP submittal.

[84] Appendix H–4, section 2.

[85] SIP submittal at 197 and 198 of 257.

[86] The MATS SO_2 limit is a limit that facilities may use to demonstrate that they meet the HCl limit for MATS, but facilities also have the option of directly complying with the MATS HCl limit, and therefore are not necessarily required to meet the MATS SO_2 limit unless the limit is included as a specific permit condition.

(Grant Town Power Plant, Mitchell Power Plant, John E. Amos Power Plant) as reasons not to conduct four-factor analyses to evaluate additional measures that may be necessary for reasonable progress in the second planning period. Although it may be reasonable for a State not to select a particular source with BART-eligible units that installed and began operating controls to meet BART emission limits for the first implementation period on a pollutant-specific basis for further analysis,[87] the Regional Haze Rule at 40 CFR 51.308(e)(5) anticipates the re-assessment of BART-eligible sources under second planning period SIP emissions control analyses. A State might, however, have a different, reasonable basis for not selecting such sources for control measure analysis.[88] To the extent that this basis applies to the sources WV DEP selected for further analysis, West Virginia must document this basis within its SIP submittal as required by 40 CFR 51.308(f)(2)(i) and (iii). In this case, West Virginia failed to do so. Additionally, West Virginia's BART determination for EGUs for the regional haze first planning period relied on CSAPR as an alternative to source-specific BART determinations.[89] CSAPR is a trading program that does not impose specific emissions limitations on particular facilities. And in fact, WV DEP did not identify any enforceable and permanent SO_2 limits that apply to the selected power plants subject to CSAPR. Therefore, in accordance with 40 CFR 51.308(e)(5), it is not reasonable for West Virginia to exclude the selected BART-eligible sources from consideration under the four statutory factors, simply because they are in compliance for BART.

Finally, WV DEP also notes, as the facilities noted, that several consent decrees related to currently installed SO_2 scrubbers for two of the facilities identified for further evaluation in its SIP (Mitchell Power Plant, John E. Amos Power Plant). But WV DEP does not state whether the consent decrees impose any specific emission limits, and does not ask for the measures required under the consent decrees submitted to be made federally enforceable and permanent within the SIP if there are such specific emission limits.

In conclusion, while WV DEP reiterates the facilities' information—that there are or may be anticipated or recent source retirements, the applicable MATS SO_2 emissions limits, BART requirements, and consent decrees within its SIP submittal for five of the sources selected for consideration under the four statutory factors—WV DEP provides no documentation or evidence within its submittal that it has incorporated the aforementioned existing effective controls as federally enforceable and permanent measures to be included in its long-term strategy for the second planning period. Additionally, WV DEP provides no evidence of, or documentation of, an actual long-term strategy that contains enforceable emissions limitations that West Virginia has determined are necessary to make reasonable progress as required by CAA 169A and the RHR, 40 CFR 51.308(f)(2).

For four of the six facilities (Harrison Power Station, Fort Martin Power Station, John E Amos Power Plant, Mitchell Power Plant) that were selected to determine measures necessary for reasonable progress, WV DEP also cites information from the owners of the power plants with reference to its progress toward achieving the URP glidepath for Dolly Sods and Otter Creek. The facility owners cite being below the URP as an additional reason for not providing four-factor analyses or imposing any reasonable progress measures or controls. While it is not clear if West Virginia is relying on any of the information provided by the facilities, including the URP, the EPA reinforces the fact that reliance on being at or below the URP is not a basis to forgo requiring further analysis of emissions measures for these sources, in the 2017 RHR preamble, the EPA clearly stated that being on or below the URP is not a ''safe harbor''; *i.e.,* achieving the URP does not mean that a Class I Area is making ''reasonable progress'' and does not relieve a State from using the four statutory factors to determine the emissions measures needed to achieve such progress.[90] Simply being below the URP should therefore not be used as a factor when determining what additional controls, if any, are necessary for reasonable progress. The URP is a planning metric used to gauge the amount of progress made thus far and the amount left to make. Because the URP is not based on the four statutory factors, it cannot be used to determine whether the amount of progress made in any particular implementation period is reasonable.[91]

WV DEP also indicates that SO_2 reductions achieved in the first planning period for certain sources or facilities—including Harrison Power Station, Fort Martin Power Station, Mitchell Power Plant, and John E. Amos Power Plant—was raised by those facilities as a justification to excuse them from having to undergo further evaluation and a four-factor analysis.[92] The EPA acknowledges that West Virginia made significant reductions in SO_2 emissions in the first planning period and that surrounding States and RPOs contribute to SO_2 emissions in West Virginia Class I Areas. But, to the extent that West Virginia is relying on this rationale, neither the Regional Haze Rule nor the CAA allows a State to avoid properly considering the four factors, in reliance on their previous planning period reductions and/or due to emissions in other States, as required by CAA 169A(g)(1) and the RHR, 40 CFR 51.308(f)(2). Additionally, the EPA has advised States that a source's visibility impact relative to a State's total contribution to visibility impairment is relevant to ensuring that a State is addressing its own contribution regardless of what other States are doing.[93]

b. Pleasants Power Station

As previously discussed, WV DEP evaluated six facilities as part of the reasonable progress analysis to determine if any potential emissions reduction measures were necessary for reasonable progress in the second planning period. Of these six facilities, only Pleasants Power Station (owned and operated by Energy Harbor) submitted an analysis utilizing the four statutory factors prescribed under CAA 169A(g)(1) and 40 CFR 51.308(f)(2)(i).[94] The Pleasants Power Station reasonable progress analysis considered three pre-combustion and five post-combustion SO_2 emissions controls.[95] The pre-

[87] 2019 Guidance at 25.

[88] Guidance on Regional Haze State Implementation Plans for the Second Implementation Period. *www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019).

[89] 83 FR 48249 (September 24, 2018). See also see September 16, 2015 ''West Virginia State Implementation Plan Revision for Regional Haze and Clean Air Act § 110(a)(2)(D)(i)(II) for Visibility Protection,'' *www.regulations.gov/document/EPA–R03–OAR–2018–0217–0002.*

[90] See the 2017 RHR, 82 FR 3093 and 3099, January 10, 2017.

[91] See 2019 Guidance at 50 and 2021 Clarifications Memo at 15.

[92] See, for example, pages 201–202 of WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period.

[93] 2021 Clarifications Memo at 15.

[94] The four statutory factors are the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected anthropogenic source of visibility impairment. *See* CAA 169A(g)(1) and 40 CFR 51.308(f)(2)(i).

[95] Section 7.8 of the SIP submittal at 199 of 257.

combustion control options considered were: utilization of lower sulfur coals; fuel blending with limestone; and coal cleaning. The post-combustion controls considered were: wet limestone scrubbers, also known as limestone forced oxidation scrubbers (LSFO);[96] spray dry absorbers (SDA); dry sorbent injection (DSI); circulating dry scrubbers with fabric filters (DS/FF); and hydrated ash reinjection (HAR).''[97] Based on the documentation provided within the submittal, it appears WV DEP relied, at least in part, on the January 2021 ''Regional Haze Four-Factor Analysis''[98] provided by Energy Harbor to eliminate all potential control options, aside from LSFO, from further consideration under the four statutory factors under the basis of technological feasibility. However, the justifications provided by Energy Harbor as to why it determined these control options to be infeasible are more appropriately considered within the context of an economic analysis. For example, Energy Harbor stated that use of lower sulfur coal is technologically infeasible. To justify this statement, Energy Harbor explained that use of lower sulfur coal would require facility modifications. While those modifications would come with some associated cost (which is not quantified or documented within the West Virginia submittal), those modifications are not described in sufficient detail for the EPA to be able to evaluate whether these options are, in fact, technologically infeasible. WV DEP did not provide any additional explanation or analysis beyond that provided by Energy Harbor.

Similarly, several post-combustion controls—spray dryer absorber, dry sorbent injection, circulating dry scrubber, and hydrated ash reinjection—were also stated to be technologically infeasible, but the justifications are, again, primarily economic in nature.[99] Table 1–1 of the January 2021 ''Regional Haze Four-Factor Analysis'' lists loss of revenue from sale of recovered gypsum and the need to add a particulate removal system and dry by-product disposal issues as the primary reasons to reject these controls on the basis of technological infeasibility. First, as with the pre-combustion controls, WV DEP (and the facility) have not provided sufficient detail for the EPA to be able to adequately evaluate whether these potential control options were appropriately eliminated from further analysis under the four statutory factors based on technological infeasibility. Second, while there may be legitimate technological issues with the addition of a particulate removal system (*e.g.,* plant layout/space constraints), the loss of revenue from gypsum recovery and additional waste removal costs are economic in nature and more appropriately considered under the cost of compliance factor. However, neither Energy Harbor, nor WV DEP, provided sufficient evidence as to how these factors would impact the cost of compliance for implementing these control technologies. While the facility did provide some cost data within its submittal to the State, neither the source nor the State provided cost calculations in the form of dollar per ton of emissions reduced. Therefore, because there is no detailed cost analysis documented within the SIP submittal using an established metric such as dollar per ton, the EPA therefore is unable to evaluate whether these controls might be available at reasonable cost.[100] West Virginia failed to substantiate its determination that energy and non-air quality impacts resulting from the installation of SO_2 control measures and the remaining useful life of the units did not justify the cost of installing SO_2 controls. West Virginia also failed to reasonably quantify and consider the ''cost of compliance'' and develop a record with respect to those costs as a basis for eliminating potential control options, in addition to incorrectly classifying the rationale as being based on technological infeasibility. These deficiencies result in an inadequate consideration by West Virginia of the four factors to eliminate possible controls for reasonable progress.

With respect to LSFO, which was the single control option that was deemed to be technologically feasible and was evaluated for cost of compliance, WV DEP stated that Energy Harbor estimated the ''cost-effectiveness of the LFSO (sic) system is $11,292.95 per ton, or $9,931.94 per ton for one scrubber,'' and ''the installation time for an LFSO (sic) system at Pleasants to be approximately 5 years with 2–3 years of plant non-operation, which is insurmountable lost revenue.''[101] However, neither Energy Harbor nor WV DEP has provided documentation within the record to support these calculations and the assertion that a two-year outage would be necessary for the modifications.

In addition to the deficient four-factor analysis, West Virginia's submission does not meet the requirements of CAA 169A or 40 CFR 51.308(f) because it did not analyze or include federally enforceable existing effective measures for Pleasants Power Station as necessary measures to meet reasonable progress for the second planning period. As we noted in our discussion with respect to West Virginia's failure to consider existing measures for the facilities for which it ultimately did not require a four-factor analysis, West Virginia's rejection of new controls for Pleasants Power Station should have resulted in consideration of whether existing measures at Pleasants Power Station are necessary for reasonable progress.[102] The RHR is designed to achieve the statutory goal of ''remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution,'' CAA 169A(a), through a ''long-term strategy [that] must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to [40 CFR 51.308](f)(2)(i) through (iv).'' 40 CFR 51.308(f)(2). While existing visibility impairment is remedied by reducing emissions from existing sources, the EPA has explained that ''[f]uture visibility impairment is prevented by mitigating impacts from new sources and ensuring that existing sources do not increase their emissions in a manner inconsistent with reasonable progress.'' Therefore, ''[w]hen the outcome of a four-factor analysis is that no new measures are reasonable for a source, the source's existing measures are generally needed to prevent future visibility impairment (*i.e.,* to prevent future emission increases) and thus necessary to make reasonable progress. Measures that are necessary to make reasonable progress must be included in the SIP.''[103] West Virginia eliminated additional control measures with a deficient and

[96] LSFO is the correct abbreviation, though West Virginia also uses the incorrect abbreviation LFSO multiple times in the SIP submittal as quoted by EPA.

[97] Section 7.8 of the SIP submittal at 199 of 257.

[98] Appendix G–2 at G–2d ''Response Letter from Energy Harbor (Pleasants Station),'' WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period.

[99] See Appendix G–2 at G–2d section 4.2 ''Step 2: Eliminate Technically Infeasible SO_2 Control Technologies'' of the ''Regional Haze Four Factor Analysis.''

[100] The cost data provided in the WV DEP Regional Haze SIP Submittal is presented in table 4.1.2 of the January 2021 ''Regional Haze Four-Factor Analysis,'' in various units of $/KW, $/kw-yr, and $/MWh. It is unclear how these values relate to EPA's recommended metric of cost/ton of emissions reduction. It is also unclear how/if West Virginia relied on these costs, since these controls were deemed to be technically infeasible, rather than being too costly. See 2019 Guidance at 31.

[101] Section 7.8 of the SIP Submittal at 200 of 257.

[102] See 2019 Guidance at 22–25

[103] Section 4 of the 2021 Clarifications Memo, pages 8–9. See also CAA 169A(b)(2); 40 CFR 51.308(f)(2).

inadequately justified or documented four-factor analysis and then did not analyze whether existing measures at Pleasants Power Station were necessary for reasonable progress, leaving the EPA unable to determine if the existing control measures should have been included in the long-term strategy as required by 40 CFR 51.308(f)(2) and outlined in our 2019 Guidance at 20–22.

West Virginia also stated in its SIP submittal that ''Energy Harbor noted the mandatory Federal Class I areas where the VISTAS PSAT modeling predicted greater than 1.00% threshold visibility impacts from the facility are presently well below the URP glide paths, demonstrating already implemented past emissions reductions measures have been and continue to be successful.'' Like the discussion in section IV.E.2.a. of this document regarding the other five facilities, simply being below the URP should not be used to determine what additional controls, if any, are necessary for reasonable progress, as the URP is only meant to gauge the amount of progress made thus far and the amount left to make. Because the URP is not based on the four statutory factors, it cannot be used to determine whether the amount of progress made in any particular implementation period is reasonable.[104] While it is unclear as to what extent Energy Harbor relied upon this assumption when conducting its analyses, the EPA reiterates that the URP cannot be used to eliminate additional control measures from consideration under a reasonable progress analysis/four statutory factors.

WV DEP stated that the remaining useful life of Pleasants Power Station is one year, based on the claim that Energy Harbor placed both units on the PJM deactivation list for deactivation by June 1, 2023.[105] However, as of November 2024, there is no evidence as to if this facility remains in operation or has permanently shut down, and WV did not include any documentation with its SIP submittal to substantiate this anticipated shutdown that would make it permanent and federally enforceable within the SIP submittal.[106] As explained previously in the discussion on the other facilities selected for reasonable progress, certain retirements/shutdowns could be considered as part of West Virginia's long-term strategy for making progress towards the national goal, provided that they are made permanent and federally enforceable and are included in the SIP. However, West Virginia has not requested that the shutdown, nor provided the necessary documentation of the shutdown, for it to be included as a permanent and federally enforceable measure necessary for reasonable progress its long term strategy in the SIP. Therefore, the EPA concludes there is nothing within WV DEP's submittal to substantiate the use of the one year remaining useful life provided for Pleasants Power Station.

c. West Virginia's Cost Estimates and Four-Factor Analyses for Replacing Existing SO_2 Controls With New LSFO Scrubbers

As previously discussed, WV DEP provided its own independent cost estimates analyzing the replacement of existing BART SO_2 controls with new LSFO scrubbers for all six facilities in section 7.8 of the SIP submittal. WV DEP stated within its submittal that LSFO ''is considered the best technology with the highest SO_2 removal efficiency of all coal and acid gas control technologies.'' [107] In table 7–37,[108] WV DEP estimated the facility-wide cost per potential ton of emission reduction based on a twenty-year remaining life expectancy.

As set forth in table 7–38, WV DEP then estimated the cost per potential ton of emission reduction for each unit based on the anticipated remaining useful life of each unit. WV DEP states that these per-unit cost estimates are ''significantly more representative'' because the estimates in table 7–37 ''are quite generous in assuming the expected life of the selected facilities to be 20 years.'' [109] WV DEP stated that the remaining useful life of Fort Martin Power Station is anticipated to be four years, or until 2026, when WV DEP expects ''the proposed Good Neighbor CSAPR FIP would require the facility to install SCR for NO_X control'' and that WV DEP does not expect the facility's owner/operator to do so.[110] WV DEP also stated that the remaining useful life of Grant Town Plant is thirteen years, or 2035,[111] when the power purchase agreement for the facility expires, and that WV DEP does not anticipate that this power purchase agreement will be extended beyond 2035. WV DEP also stated that the remaining lifespans of Harrison Power Station, the John E. Amos Plant, and the Mitchell Plant each are not anticipated to exceed fifteen years, or 2037, based on the age of the facility in 2037 (sixty-five years old) compared to the fifty-year average lifespan of coal-fired power plants in the United States according to the Energy Information Administration (EIA).[112] Finally, as discussed previously, WV DEP stated that the remaining lifespan of Pleasants Power Station is one year, as the owner/operator placed the facility on the PJM list for deactivation by June 1, 2023, though WV DEP's response to the EPA's comments also notes that this shutdown is ''not currently enforceable.''[113] Furthermore, WV DEP has not provided any evidence that the described retirement dates for any of the six facilities it performed cost effectiveness analyses for are federally enforceable and permanent within its SIP submittal.

In addition to ''remaining useful life'' being one of the four statutory factors, the EPA has previously established within its 2019 Guidance that a short remaining useful life is also directly correlated with the cost of compliance factor, as the annualized calculated cost of compliance generally increases with a shorter remaining useful life based on the decreasing amortization period.[114] In other words, a short remaining useful life increases the remaining cost of compliance for implementing new or additional emissions control technologies. As previously discussed, WV DEP has not provided sufficient evidence within its SIP submittal that any of the six retirement dates are federally enforceable to warrant the use of a shorter remaining useful life within its cost estimates. Therefore, the EPA is unable to conclude whether the provided dates represent a reasonable

[104] See 2019 Guidance at 50 and 2021 Clarifications Memo at 15.

[105] Section 7.8 of the SIP Submittal at 204, 206 of 257

[106] 2019 Guidance at 34 (''In the situation of an enforceable requirement for the source to cease operation before the end of the useful life of the controls under consideration, a state may use the enforceable shutdown date as the end of the remaining useful life. To the extent such a requirement is being relied upon for a reasonable progress determination, the measure would need to be included in the SIP and/or be federally enforceable. See 40 CFR 51.308(f)(2).'').

[107] ''Cost Estimates for Scrubber Replacement at Facilities Selected for Four Factor Analyses'' SIP submittal at 202 of 257.

[108] SIP submittal at 203 of 257.

[109] *Id.*

[110] Table 7–38, SIP submittal at 205 of 257, and ''Cost Estimates for Scrubber Replacement at Facilities Selected for Four Factor Analyses'' at 206 of 257.

[111] West Virginia states that the remaining lifespan of Grant Town Plant lasts until 2035 at page 206 of the SIP submittal and 2036 at page 198 of the SIP submittal.

[112] SIP submittal at 206 of 257.

[113] Appendix H–4, ''West Virginia Department of Environmental Protection Division of Air Quality Responses to EPA Region 3 Comments on the West Virginia Draft Regional Haze State Implementation Plan August 2022,'' section 3. See also SIP submittal at 206 of 257.

[114] 2019 Guidance at 20.

assumption upon which to base a cost analysis [115].

Additionally, the cost estimates that WV DEP performed for the six facilities discussed in IV.E.2.a. and IV.E.2.b., of this document, are insufficiently justified within its SIP submittal. For example, WV DEP includes categories of costs (such as new LSFO costs and annual operation and maintenance costs as facility-wide and unit-specific costs) in tables 7–37 and 7–38. WV DEP explains that these costs were based on a 9,500 Btu/kWH [116] heat rate and an assumed 20-year lifetime. However, WV DEP does not provide any evidence supporting how it established those costs, nor does WV DEP explain the origin of such information including its underlying calculations or documentation. For example, as noted above, WV DEP did not provide unit level evidence of enforceable and permanent retirements for units that have an assumed shortened lifetime in table-7–38. But WV DEP also did not adequately explain why they used a 20-year lifetime for the calculations in table 7–37 instead of a 30-year lifetime, as recommended in the EPA's Control Cost Manual. Comparing the existing age of operating plants to the average age of all plants in the country is not an appropriate justification for assuming a shortened lifetime (using 20 years instead of 30 years). The EPA agrees that it would likely be impractical and prohibitively expensive to remove the existing control equipment and replace it with entirely new controls in pursuit of relatively minor improvements in emission reduction efficiency. However, this is not the appropriate basis upon which to exclude potential additional measures (*e.g.,* optimization of existing controls with a corresponding emissions limit) from consideration in a reasonable progress analysis, and would be inconsistent with consideration of a ''meaningful set'' of control options.[117] In addition, as West Virginia is requiring no additional emissions reductions measures for selected sources in the second planning period, the SIP submittal also does not explain or adequately support the absence of analysis or documentation of existing measures within the SIP (*e.g.,* existing permit limits) for the facilities identified in the reasonable progress discussion and whether those measures are necessary for reasonable progress. West Virginia's deficient and insufficiently documented cost estimates ultimately result in the State's failure to develop a long-term strategy containing enforceable measures that are necessary to make reasonable progress in the second planning period under CAA 169A and RHR 40 CFR 51.308(f)(2).[118]

d. Summary/Conclusion

Regarding selection of sources for reasonable progress and four-factor analyses, West Virginia's submittal cites the EPA's 2019 Guidance in saying that ''that the selection of emission sources for analysis is the responsibility of the state.'' [119] However, as part of this analysis, States are required to adequately justify their rationale and methodology for selecting sources and evaluating emissions controls. And in fact, West Virginia quotes the regional haze rule requirement at 40 CFR 51.308(f)(2)(i) that ''The State must include in its implementation plan a description of the criteria it used to determine which sources or groups of sources it evaluated and how the four factors were taken into consideration in selecting the measures for inclusion in its long-term strategy.'' [120] Based on the information contained in the SIP submittal and the EPA's review of the information, West Virginia has not satisfied this requirement.

Therefore, West Virginia's inadequate analysis of the four statutory factors was unreasonable. It was not reasonable for West Virginia to reject determining what measures, if any, are necessary to make reasonable progress toward the national goal, and thus need to be a part of the State's long-term strategy. West Virginia failed to ''evaluate and determine the emission reduction measures that are necessary to make reasonable progress by considering the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected anthropogenic source of visibility impairment,'' as required by 40 CFR 51.308(f)(2)(i) and CAA section 169A(g)(1). The EPA expressed these issues and concerns during the public comment period of West Virginia's draft SIP submittal.[121] West Virginia's submittal has not adequately addressed these deficiencies.

Further, the national goal set by Congress outlines both the remedying of any existing visibility impairment, and also preventing any future visibility impairment. CAA section 169A(a). In the absence of any new measures, West Virginia also did not evaluate whether the continued implementation of the existing measures at any of the selected sources is necessary for reasonable progress. Specifically, West Virginia did not clearly explain that it intends to submit any of the measures for the six facilities discussed in section 7.8 of the SIP as existing measures necessary for reasonable progress, did not submit documentation for any particular existing measures, and does not request to include such measures in the SIP as part of its long-term strategy. West Virginia therefore did not provide a reasonable rationale to support a conclusion that for the second planning period, no new or existing measures are necessary for its long-term strategy, despite identifying numerous sources that impact visibility at nine Class I Areas.

Providing a long-term strategy for making reasonable progress toward the national goal, including consideration of the four factors, is a statutory and regulatory requirement for every State. Although WV DEP selected six sources for reasonable progress analysis and conducted its own cost estimates for those six sources, and one facility conducted a four-factor analysis upon which WV DEP relied, West Virginia failed to conduct sufficiently robust and adequately supported analyses of the four statutory factors for any of the six sources. West Virginia neither assessed other potential new measures, nor did it conduct any analysis of existing measures or put forth such measures for inclusion in the SIP. Therefore West Virginia has not established that its second planning period SIP submission contains the emission limits, schedules of compliance, and other measures as may be necessary to make reasonable progress toward meeting the national

[115] The EPA Control Cost Manual generally recommends an assumed 30-year lifetime for scrubbers and used a 30- year lifetime in all of the Control Cost Manual example calculations. See Section 5—Chapter 1: Wet and Dry Scrubbers for Acid Gas Control, pp 1–8 and 1–36 to 1–37, available at*www.epa.gov/sites/default/files/2021-05/documents/wet_and_dry_scrubbers_section_5_chapter_1_control_cost_manual_7th_edition.pdf.* See also 2019 Guidance at 33–34 (''In the situation where an enforceable shutdown date does not exist, the remaining useful life of a control under consideration should be full period of useful life of that control as recommended by EPA's Control Cost Manual.'').

[116] Kilowatthour (kWh) is a measure of electricity defined as a unit of work or energy, measured as 1 kilowatt (1,000 watts) of power expended for 1 hour.

[117] 82 FR 3088.

[118] West Virginia's independent analysis did not consider two of the four statutory factors of CAA section 169A(g)(1)—the energy and non air quality environmental impacts of compliance and time necessary for compliance.

[119] See section 7.6.4 of the SIP submittal at 180 of 257.

[120] *Id.*

[121] See January 5, 2022, letter from Cristina Fernandez, Director Air and Radiation Division, EPA Region 3 to Laura Crowder, Division of Air Quality, WV DEP, in the rulemaking docket for this action.

visibility goal consistent with the CAA and the RHR.[122]

In conclusion, the SIP submission meets neither the regional haze requirements, nor requirements of the CAA. Specifically, as described in detail above, the SIP submission fails to satisfy the statutory requirements in CAA section 169A(b)(2)(B) to contain a long-term strategy for making reasonable progress; the CAA section 169A(g)(1) requirement to consider the four factors in determining reasonable progress; and the CAA section 169A(b)(2) requirement for the SIP to contain the emissions limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal. In addition, lack of robust evaluation of emissions measures considering the four factors, and related inadequate supporting documentation of the analyses and conclusions, results in West Virginia not meeting the regulatory requirements in 40 CFR 51.308(f)(2) and (f)(2)(i) and (iii). Therefore, the EPA is proposing to disapprove West Virginia's Regional Haze SIP submission.

F. Additional Long-Term Strategy Requirements

The consultation requirements of 40 CFR 51.308(f)(2)(ii) provide that States must consult with other States that are reasonably anticipated to contribute to visibility impairment in a Class I Area to develop coordinated emission management strategies containing the emission reductions measures that are necessary to make reasonable progress. Section 51.308(f)(2)(ii)(A) and (B) require States to consider the emission reduction measures identified by other States as necessary for reasonable progress and to include agreed upon measures in their SIPs. Section 51.308(f)(2)(ii)(C) speaks to what happens if States cannot agree on what measures are necessary to make reasonable progress.

WV DEP included documentation of its calls, webinars, presentations, and other consultation with VISTAS and non-VISTAS States from December 2017 to October 2020. West Virginia's consultation documentation confirms that no States disagreed with or provided comment on West Virginia's approach to its long-term strategy.

Section 51.308(f)(2)(iii) also requires that the emissions information considered to determine the measures that are necessary to make reasonable progress include information on emissions for the most recent year for which the State has submitted triennial emissions data to the EPA (or a more recent year), with a twelve-month exemption period for newly submitted data.

WV DEP included emissions information from the most recent year in its submittal; 2017, 2018, and 2019 emissions information that had been previously reported to the EPA and compared these emissions to the 2028 emissions used in its modeling.[123] Table 7–35 shows all West Virginia facilities with greater than 100 tpy SO_2 emissions in 2017 and table 7–36 shows all West Virginia facilities with greater than 100 tpy NO_X emissions in 2017.

As summarized in section IV of this document, the State provided emissions inventory information for individual sources for multiple years, including the most recent year for which the State submitted emissions data to the EPA in compliance with the triennial reporting requirements of the AERR.

Regardless, as explained in the preceding sections, due to flaws and omissions in its source evaluations, four-factor analyses and the resulting control determinations, the EPA finds that West Virginia failed to submit to the EPA a long-term strategy that includes ''the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress'' as required by 40 CFR 51.308(f)(2).[124] Consequently, we find that West Virginia's SIP does not satisfy the long-term strategy requirements of 40 CFR 51.308(f)(2). Therefore, the EPA proposes to disapprove all elements of West Virginia's SIP submission as it relates to 40 CFR 51.308(f)(2)'s long-term strategy requirements.

G. Reasonable Progress Goals

Section 51.308(f)(3) contains the requirements pertaining to RPGs for each Class I Area. Section 51.308(f)(3)(i) requires a State in which a Class I area is located to establish RPGs—one each for the clearest days and the most impaired days—reflecting the visibility conditions that will be achieved at the end of the planning period as a result of the emission limitations, compliance schedules, and other measures required under paragraph (f)(2) to be in a State's long-term strategy, as well as the implementation of other CAA requirements. The long-term strategy, as reflected by the RPGs, must provide for an improvement in visibility on the most impaired days relative to the baseline period and ensure no degradation on the clearest days relative to the baseline period. Section 51.308(f)(3)(ii) applies in circumstances in which a Class I area's RPG for the most impaired days represents a slower rate of visibility improvement than the uniform rate of progress calculated under 40 CFR 51.308(f)(1)(vi). Under 40 CFR 51.308(f)(3)(ii)(A), if the State in which a mandatory Class I area is located establishes an RPG for the most impaired days that provides for a slower rate of visibility improvement than the URP, the State must demonstrate that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the State that would be reasonable to include in its long-term strategy. Section 51.308(f)(3)(ii)(B) requires that if a State contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I area in another State, and the RPG for the most impaired days in that Class I area is above the URP, the upwind State must provide the same demonstration.

West Virginia established 2028 RPGs for both of its Class I areas in deciviews for the 20 percent clearest days and the 20 percent most impaired in tables 8–1 and 8–2 of its submittal, respectively, and both Class I areas are projected to remain below the URP based on VISTAS modeling. However, as outlined throughout this document, because West Virginia's SIP submission did not meet the required statutory or regulatory requirements, the EPA is proposing to disapprove the SIP in its entirety, and is not proposing to approve these regulatory requirements. Additionally, per 40 CFR 51.308(f)(3)(iv), the EPA must evaluate the demonstrations the State developed pursuant to 40 CFR 51.308(f)(2) to determine whether the State's reasonable progress goals for visibility improvement provide for reasonable progress towards natural visibility conditions. As previously explained in section IV.E. of this document we are proposing to disapprove West Virginia's long-term strategy for failing to meet the requirements of 40 CFR 51.308(f)(2). Therefore, we also propose to disapprove West Virginia's reasonable progress goals under 40 CFR 51.308(f)(3) because compliance with that

[122] See also CAA 169A(b)(2).

[123] See Section 7.6.5, ''Evaluation of Recent Emission Inventory Information'' of WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period.

[124] See also CAA 169A(b)(2)(B) (requiring regional haze SIPs to ''contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal, . . . including . . . a long-term . . . strategy for making reasonable progress[.]'').

requirement is dependent on compliance with 40 CFR 51.308(f)(2).[125]

H. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(f)(6) specifies that each comprehensive revision of a State's Regional Haze SIP must contain or provide for certain elements, including monitoring strategies, emissions inventories, and any reporting, recordkeeping and other measures needed to assess and report on visibility. A main requirement of this section is for States with Class I Areas to submit monitoring strategies for measuring, characterizing, and reporting on visibility impairment. Section 51.308(f)(6)(ii) requires SIPs to provide for procedures by which monitoring data and other information are used in determining the contribution of emissions from within the State to Regional Haze visibility impairment at mandatory Class I Federal Areas both within and outside the State. Section 51.308(f)(6)(iii) requires SIPs to provide procedures by which monitoring data and other information are used in determining the contribution of emissions from within the State to Regional Haze visibility impairment at mandatory Class I Federal Areas in other States. Section 51.308(f)(6)(iv) requires the SIP to provide for the reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the State. Section 51.308(f)(6)(v) requires SIPs to provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment, including emissions for the most recent year for which data are available. Section 51.308(f)(6)(v) also requires States to include estimates of future projected emissions and include a commitment to update the inventory periodically.

With respect to 40 CFR 51.308(f)(6)(i), WV DEP stated that the existing IMPROVE monitors for the State's Class I areas are sufficient for the purposes of this SIP revision. With respect to 40 CFR 51.308(f)(6)(ii), WV DEP stated that it will use data from these IMPROVE monitors for future haze plans and progress reports. 40 CFR 51.308(f)(6)(iii) does not apply to West Virginia, as this provision only applies to States with no Class I areas. With respect to 40 CFR 51.308(f)(6)(iv), the NPS manages and oversees the IMPROVE monitoring network and reviews, verifies, and validates IMPROVE data before its submission to the EPA's Air Quality System (AQS). With respect to 40 CFR 51.308(f)(6)(v), WV DEP provided a baseline emissions inventories, current emissions data, and 2028 future emissions projections for visibility-impairing pollutants for source categories and specific point sources, and committed to update the inventory periodically.[126] With respect to 40 CFR 51.308(f)(6)(vi), West Virginia affirmed that there are no elements, including reporting, recordkeeping, or other measures, necessary to address and report on visibility for West Virginia's Class I areas or Class I areas outside the State that are affected by sources in West Virginia.

However, as outlined throughout this document, because West Virginia's SIP submission did not meet the required statutory or regulatory requirements, the EPA is proposing to disapprove the SIP in its entirety and is not proposing to approve these regulatory requirements.

I. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires that periodic comprehensive revisions of States' Regional Haze plans also address the progress report requirements of 40 CFR 51.308(g)(1) through (5). The purpose of these requirements is to evaluate progress towards the applicable RPGs for each Class I Area within the State and each Class I Area outside the State that may be affected by emissions from within that State. Sections 51.308(g)(1) and (2) apply to all States and require a description of the status of implementation of all measures included in a State's first implementation period Regional Haze plan and a summary of the emission reductions achieved through implementation of those measures. Section 51.308(g)(3) applies only to States with Class I Areas within their borders and requires such States to assess current visibility conditions, changes in visibility relative to baseline (2000–2004) visibility conditions, and changes in visibility conditions relative to the period addressed in the first implementation period progress report.

Section 51.308(g)(4) applies to all States and requires an analysis tracking changes in emissions of pollutants contributing to visibility impairment from all sources and sectors since the period addressed by the first implementation period progress report. This provision further specifies the year or years through which the analysis must extend depending on the type of source and the platform through which its emission information is reported. Finally, 40 CFR 51.308(g)(5), which also applies to all States, requires an assessment of any significant changes in anthropogenic emissions within or outside the State that have occurred since the period addressed by the first implementation period progress report, including whether such changes were anticipated and whether they have limited or impeded expected progress towards reducing emissions and improving visibility.

With respect to the 40 CFR 51.308(g)(1) through (5) requirements, WV DEP included a description of the status of the implementation of all measures included in West Virginia's first implementation period Regional Haze Plan, a summary of the emissions reductions achieved from these measures, an analysis tracking changes in emissions, and an assessment of significant changes in emissions. However, as outlined throughout this document, because West Virginia's SIP submission did not meet the required statutory or regulatory requirements, the EPA is proposing to disapprove the SIP in its entirety and is not proposing to approve these regulatory requirements.

J. Requirements for State and Federal Land Manager Coordination

Section 169A(d) of the CAA requires States to consult with FLMs before holding the public hearing on a proposed Regional Haze SIP, and to include ''a summary of the FLMs' conclusions and recommendations in the notice to the public.''

Section 51.308(i)(2)'s FLM consultation provision requires a State to provide FLMs with an opportunity for consultation that is early enough in the State's policy analyses of its emission reduction obligation so that information and recommendations provided by the FLMs can meaningfully inform the State's decisions on its long-term strategy. If the consultation has taken place at least 120 days before a public hearing or public comment period, the opportunity for consultation will be deemed early enough. Regardless, the opportunity for consultation must be provided at least sixty days before a public hearing or public comment period at the State level. Section 51.308(i)(2) also provides two substantive topics on which FLMs must be provided an opportunity to discuss with States: assessment of visibility impairment in any Class I Area

[125] See CAA 169A(b)(2), 40 CFR 51.308(f)(2).

[126] See Section 4, ''Types of Emissions Impacting Visibility Impairment in West Virginia Class I Areas'', Section 7.2.4, ''EPA Inventories'', and Section 13, ''Progress Report'' of WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period.

and recommendations on the development and implementation of strategies to address visibility impairment. Section 51.308(i)(3) requires States, in developing their implementation plans, to include a description of how they addressed FLMs' comments.

WV DEP included records of its consultation with various FLMs. The NPS submitted comments to WV DEP on October 19, 2021, the USFS submitted comments on October 26, 2021, and the FWS did not submit comments. WV DEP included the FLM comments and its responses in its submittal.[127]

While WV DEP did take administrative steps to conduct consultation, if the EPA finalizes the disapproval of the SIP, in the process of correcting the deficiencies outlined above with respect to the RHR and statutory requirements, the State (or the EPA in the case of an eventual FIP) will again be required to satisfy the FLM consultation requirements under 40 CFR 51.308(i)(2).[128] However, as discussed throughout this document, because WV DEP's SIP submission did not meet the required statutory or regulatory requirements, the EPA is proposing to disapprove the SIP in its entirety, and is not proposing to approve these regulatory requirements.

V. Environmental Justice

WV DEP included Appendix I, ''Environmental Justice,'' to its SIP submittal. Appendix I consists entirely of a 2021 Informal Resolution between WV DEP and the EPA resolving a claim under Title VI of the Civil Rights Act of 1964 related to alleged discrimination against African American descendants of persons buried in the Boyd Carter Memorial Cemetery. Appendix I does not contain any analysis or evaluation of impacts of this SIP on communities with environmental justice concerns. Neither the CAA nor the applicable implementing regulations either prohibit or require such an evaluation. The EPA did not conduct an environmental justice (EJ) screening analysis for this SIP submittal.

VI. Proposed Action

The EPA is proposing to disapprove the WV DEP SIP submission relating to Regional Haze for the second planning period received on August 12, 2022, because the State's SIP submission fails to meet both the regulatory requirements of the Regional Haze Rule and the statutory requirements of the Clean Air Act. Specifically, because WV DEP failed to conduct the proper analyses to determine what measures are necessary for reasonable progress and did not adequately consider the four statutory factors, thereby not including a sufficiently robust and adequately justified long-term strategy that includes measures necessary for reasonable progress in its second planning period SIP submission. West Virginia's SIP submission does not contain the emission limits, schedules of compliance, and other measures as may be necessary to make reasonable progress toward meeting the national visibility goal. Therefore, the SIP submission does not meet the regional haze requirements, nor requirements of the CAA. Specifically, as described in detail in this NPRM, the SIP submission does not meet the statutory requirements in CAA section 169A(b)(2)(B) to contain a long-term strategy for making reasonable progress; the CAA section 169A(g)(1) requirement to consider the four factors in determining reasonable progress; and the CAA section 169A(b)(2) requirement for the SIP to contain the emissions limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal. In addition, the insufficiently robust and inadequately justified source selection, evaluation of emissions measures considering the four factors, related inadequate supporting documentation, and the failure to discuss or adequately evaluate existing measures in the absence of any new measures results in the WV DEP SIP submission not meeting the regulatory requirements in 40 CFR 51.308(f)(2).

The EPA is not proposing a FIP at this time. If the EPA finalizes the disapproval, that will start a two-year clock for the EPA to propose and finalize a FIP. We are processing this as a proposed action because we are soliciting comments on this proposed action. Disapproval does not start a mandatory sanctions clock for West Virginia. Final rule will occur after consideration of any comments.

VII. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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;
- 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

[127] Appendix H–2 ''Federal Land Manager Comments'' in WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period.

[128] In addition, if the EPA finalizes our proposed disapproval of WV DEP's SIP submittal, the State (or the EPA in the potential case of a FIP) will be required to again complete the FLM consultation requirements under 40 CFR 51.308(i).

negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' West Virginia did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The 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 impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

• In addition, this action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2025–01101 Filed 1–17–25; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2024–0241; FRL–12545–01–R4]

Air Plan Partial Approval and Partial Disapproval; South Carolina; Minor Source Permit Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove changes to South Carolina's State Implementation Plan (SIP) to revise regulations prescribing minor source permit program requirements, including minor new source review (NSR) requirements as submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), on the following dates: October 1, 2007; July 18, 2011; June 17, 2013; August 8, 2014; January 20, 2016; July 27, 2016; and April 24, 2020. This action is being proposed pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before February 20, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2024–0241 at *regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Weston Freund, 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. The telephone number is (404) 562–8773. Mr. Freund can also be reached via electronic mail at *freund.weston@epa.gov.*

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I. What action is EPA proposing?

On October 1, 2007; July 18, 2011; June 17, 2013; August 8, 2014; January 20, 2016; July 27, 2016;[1] September 5, 2017; April 24, 2020; and February 4, 2022, SC DHEC[2] submitted SIP revisions to EPA for approval that include changes to South Carolina's minor source permitting regulations to clarify and streamline the State's federally approved minor preconstruction and minor operating permitting program. This federally approved program requires stationary sources of air pollutants planning to construct or modify to first obtain a construction permit and to obtain and maintain operating permits in accordance with the South Carolina Code of Regulations Annotated (S.C. Code Ann. Regs. hereinafter ''Regulation'') 61–62.1, Section II,

[1] EPA notes that while the July 27, 2016, submittal was signed and dated by SC DHEC on July 25, 2016, it was received via EPA's SPeCS for SIPs system on July 27, 2016.

[2] On July 1, 2024, SC DHEC was restructured into a health agency, the Department of Public Health, and an environmental agency, the Department of Environmental Services (DES). In a letter dated June 20, 2024, South Carolina represented to EPA that all the functions, powers, and duties of the environmental divisions, offices, and programs of DHEC, including the authority to administer and enforce State implementation plans, are retained and continued in full force and effect under DES. This letter is in the docket for this proposed rulemaking. Throughout this proposal, the terms, ''Department'', ''South Carolina Department of Health and Environmental Services'', ''SCDHEC'', ''South Carolina Department of Environmental Services'', and ''SCDES'' are all interchangeable.

Permit Requirements. CAA section 110(a)(2)(C) provides that SIPs must include a program to regulate the construction and modification of any stationary source as necessary to assure that the national ambient air quality standards (NAAQS) are achieved, and it cites to more detailed CAA permitting requirements that pertain to the construction of major sources of air pollution. These CAA requirements for regulating the construction and modification of stationary sources, known collectively as the New Source Review (NSR) program, consists of the following three programs: (1) Prevention of significant deterioration (PSD) for major stationary sources and major modifications in attainment and unclassifiable areas; (2) nonattainment new source review (NNSR) for major stationary sources and major modifications locating in or impacting nonattainment areas, and (3) minor NSR, which applies generally to attainment, unclassifiable, and nonattainment areas for new sources and modifications that fall below the major NSR thresholds. Federal regulations setting forth these NSR programs are prescribed at 40 CFR part 51, subpart I, *Review of New Sources and Modifications,* and Appendix S to part 51, *Emission Offset Interpretive Ruling.* Specifically, 40 CFR 51.165 generally details components of the NNSR program in conjunction with Appendix S to part 51. Next, 40 CFR 51.166 prescribes minimum requirements for SIP-approved PSD programs. The regulations at 40 CFR 51.160–164 are generally applicable to all NSR programs, but because of the more specific implementing regulations for the NNSR and PSD programs at 40 CFR 51.165 and 51.166, and 40 CFR 51.160–164 serve primarily as the basis for EPA's evaluation of minor NSR programs. Accordingly, in this proposed action, EPA is evaluating submitted changes to South Carolina's existing SIP-approved minor NSR program against the generally applicable Federal NSR rules and is proposing to approve in part, and disapprove in part, these revisions. EPA is also evaluating changes to provisions for obtaining minor source operating permits, which are already approved into the South Carolina SIP. These regulations include provisions for federally enforceable State operating permits (FESOPs), which include limits on potential to emit (PTE) to enable a source or modification to qualify as minor and avoid major NSR applicability (PSD and NNSR programs) as well as title V major source status.

Through a notice of proposed rulemaking (NPRM) published on August 17, 2017 (82 FR 39083), EPA proposed to approve changes to the October 1, 2007; July 18, 2011; June 17, 2013; August 8, 2014; January 20, 2016; and July 25, 2016 SIP submissions. A comprehensive discussion of EPA's analysis and rationale for those proposed changes to the South Carolina SIP is described in the August 17, 2017 NPRM. Comments on the August 17, 2017 NPRM were due on or before September 18, 2017. Adverse comments were received on the proposed changes to Regulation 61–62.1, subparagraph II(B)(2)(h); Regulation 61–62.1, paragraph II(B)(3); Regulation 61–62.1, paragraph II(B)(5); Regulation 61–62.1, paragraph II(B)(6); Regulation 61–62.1, subsection II(D); Regulation 61–62.1, paragraph II(E)(4); Regulation 61–62.1, Section II(I); Regulation 61–62.1, subsection II(K); Regulation 61–62.1, paragraph II(N)(1); and Regulation 61–62.1, paragraph II(N)(6). The comments are available in the docket for this proposed action. EPA did not finalize action on the August 2017 NPRM. Comments on that action have persuaded EPA to reconsider some elements of the SIP submissions described above. EPA is now proposing to disapprove several provisions that received adverse comment. In addition, EPA is proposing to disapprove several provisions that did not receive adverse comment, and is re-proposing approval of several provisions that received adverse comment in the 2017 NPRM. EPA is not reconsidering or seeking additional comment on certain provisions found in the 2017 NPRM that did not receive comments.[3] In this proposed action, EPA is also proposing to act on the SIP revisions requested by South Carolina since the 2017 NPRM in its submittals from September 5, 2017; April 24, 2020; and February 4, 2022.

II. Analysis of the State's Submittals

A. Overview and Analysis of Changes to Regulation 61–62.1, Section II, Permit Requirements

Section 110(a)(2)(C) of the CAA requires that SIPs include a program to regulate the construction and modification of stationary sources as necessary to ensure that the NAAQS are maintained. Federal regulations at 40 CFR 51.160(e) require that such a State program identify the types and sizes of sources subject to review and the basis for determining which sources are subject. Additionally, CAA section 110(l) provides that EPA shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the CAA.

South Carolina has a SIP-approved minor source permitting program that includes minor NSR permitting at Regulation 61–62.1, Section II, *Permit Requirements.* These regulations require stationary sources that are planning to construct, alter, or add to a source of air pollutants to first obtain a preconstruction permit from the permitting agency and to request an operating permit upon placing the new or altered source into operation. These stationary sources include different types of minor sources. The program covers ''true minor'' sources, which have the potential to emit (PTE) certain pollutants below major NSR thresholds for new sources and modifications. The SIP-approved minor source permitting program also includes provisions for issuing permits that establish federally enforceable emissions limits to restrict the PTE of certain pollutants below major stationary source and major modification applicability thresholds: ''synthetic minor'' permits establish these enforceable emision limits for sources obtaining construction permits, and ''conditional major'' permits establish these emission limits in the corresponding operating permits. South Carolina initially revised its minor source permitting program rules in the October 1, 2007 submittal to clarify and streamline requirements for obtaining minor source construction and operating permits. Subsequent submittals make other changes, which are discussed for each subsection of the regulation, below.

EPA has reviewed the proposed changes to the minor source construction and operating permitting regulations and is proposing to approve in part and disapprove in part for the reasons discussed below.

1. Subsection II(B)—Exemptions From the Requirement To Obtain a Construction Permit

Regulation 61–62.1, Section II(B)—*Exemptions from the Requirement to*

[3] EPA proposed to approve and did not receive comments on changes in the 2017 NPRM to the following: 61–62.1, subsection II.A; 61–62.1, paragraphs II(B)(1) and II(B)(4); 61–62.1, subsection II(C); 61–62.1, paragraphs II(E)(1), II(E)(2), II(E)(3), and II(E)(5); 61–62.1 subsection II(F); 61–62.1, subsection II(J); 61–62.1, subsection II(M); 61–62.1, paragraph II(N)(5); and 61–62.1, subsection II(O). For more information on these proposed changes, see 82 FR 39083 (August 17, 2017). However, in this document, EPA is now proposing to disapprove Regulation 61–62.1, subsection II(E) in its entirety and subsection II(F) in its entirety, as discussed in Sections II.A.4 and II.A.5 of this NPRM.

Obtain a Construction Permit specifies which types of minor sources are exempt from obtaining minor source construction permits. The October 1, 2007 submittal makes several changes to subsection II(B), including renumbering subsection II(F)[4] to subsection II(B) and modifying the title to clarify that the paragraph applies only to construction permits. Additional changes are made to subsection II(B) in the submittals from July 18, 2011; June 17, 2013; August 8, 2014; and April 24, 2020, and are described below.

One universal change to subsection II(B) from the April 24, 2020 submittal is administrative in nature by placing the alphanumeric provision dividers in parentheses. The submittal also makes other non-substantive and ministerial changes. EPA is proposing to approve these editorial and minor changes as they are consistent with CAA section 110.

a. Paragraph II(B)(2)

The October 1, 2007 submittal revises paragraph II(B)(2) by clarifying that the permits described are ''construction'' permits. It also specifies that stationary sources exempt from the construction permit requirements are listed in subparagraphs II(B)(2)(a) through (h). Additionally, the 2007 submittal adds a statement that a source's exemption status may change (and thus require a permit) upon the promulgation of new regulatory requirements. EPA has reviewed these ministerial changes and preliminarily found them to be consistent with CAA section 110. Therefore, EPA is proposing to approve these changes to South Carolina's SIP at Regulation 61–62.1, subsection II(B).

i. Subparagraph II(B)(2)(b)

In the October 1, 2007 submittal, a new subparagraph in Section II—(B)(2)(b)—adds an exemption to the requirement to obtain a construction permit for boilers and space heaters of less than 10 million British thermal units per hour (MMBtu/hr) rated input capacity that burn only virgin gas fuels. South Carolina has determined that these small boilers and space heaters do not require permits because they are not likely to have significant air quality impacts and permits for these units would be unlikely to set forth unique requirements. Units of this size would be generally consistent with other pollutant-rate based exemptions of 1 lb/hr for particulate matter (PM) that are approved in the current SIP at paragraph II(F)(2) and that the State also put forward for additional pollutants at subparagraph II(B)(2)(h) in the October 1, 2007, submittal, which is discussed below. EPA similarly does not prescribe specific requirements for boilers smaller than this threshold. *See* 40 CFR 60.40c(a).

EPA has reviewed this new exemption and supports the State's determination to exempt auxiliary boilers and space heaters of less than 10 MMBtu/hr rated input capacity that burn only virgin gas fuels because they are not expected to interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement. Therefore, EPA is proposing to approve subparagraph II(B)(2)(b) into the SIP pursuant to the CAA.

By inserting the new subparagraph (b) under subparagraph (B)(2), the subparagraphs below are relettered, such that the old subparagraph (b) becomes the new subparagraph (c), and so forth. EPA is also proposing to approve this minor change.

ii. Subparagraph II(B)(2)(f)

The October 1, 2007 submittal revises subparagraph II(B)(2)(f) to expand the exemption from construction permitting requirements for certain emergency power generators. The current SIP-approved regulation provides an exemption from construction permits for emergency power generators of ''less than'' 150 kilowatt (KW) rated capacity, as well as larger emergency power generators that operate 250 hours per year or less and have a method to record the actual hour of use, such as an hour meter. The revision provides an exemption for emergency power generators of ''less than or equal to'' 150 KW rated capacity, as well as generators that are designated for emergency use only and operate 500 hours or less per year for testing and maintenance and have a method to record the actual hours of use, such as an hour meter.

South Carolina's December 30, 2016 letter explains that the State considered CAA section 110(l), and asserts that the State expects no increase in actual emissions as a result of raising this exemption threshold for emergency power generators.[5] South Carolina further explains that the 500 hours per year threshold is commonly used to determine the PTE for title V and other major NSR applicability determinations, consistent with an EPA guidance memorandum.[6] These sources are still restricted to emergency conditions, meaning that other types of non-emergency activities—such as peak shaving[7]—would not qualify for the exemption under subparagraph II(B)(2)(f). Additionally, the State points to applicable Federal requirements for emergency generators at 40 CFR part 63 at subpart ZZZZ and 40 CFR part 60 at subparts IIII and JJJJ that restrict non-emergency use of these sources to 100 hours per year.

Subsequently, South Carolina submitted a letter dated March 23, 2020, more specifically addressing equivalent changes to Regulation 61–62.1, Standard No. 5.2, *Control of Oxides of Nitrogen (NO_X),* to provide further clarifying information.[8] In this letter, the State notes that no Federal standards were in place for these emergency engines at the time they were developing the original Standard No. 5.2 in the 2004 timeframe. In fact, the exemption in place in 61–62.1, Section II had been in place over a decade before.[9] The March 23, 2020 letter explains that South Carolina had polled owners and operators in the past about typical usage for testing and maintenance for these emergency generators, and the State developed the 250-hour per year threshold as a result. The State explains that the 250-hour per year threshold was never intended to limit actual emergency use of the generators but was meant to serve as a general exemption for a reasonable amount of non-emergency use. This is also a critical change to include in the SIP so that the Regulation is clear as to how the State applies it and emergency generators are not limited in their emergency use. Since that time, EPA promulgated 40 CFR part 63, subpart ZZZZ, which South Carolina confirms in its letter applies to all such emergency engines in the State. The exemption in subparagraph II(B)(2)(f) also clearly only applies to generators designated for emergency use. Consequently, all non-emergency use for these emergency generators is

[4] Additional changes to the revised subsection II(F) are discussed later in this document.

[5] This letter is included in the docket for this proposed action.

[6] Seitz, John S, ''Calculating Potential to Emit (PTE) for Emergency Generators.'' Memorandum to Program Directors in EPA Regional Offices, Office of Air Quality Planning and Standards, Research Triangle Park, NC (Sept. 6, 1995).

[7] Peak shaving is the practice of reducing a facility's consumption of utility-provided power by instead using limited onsite power during periods of high energy demand.

[8] This letter is included in the docket for this proposed action. South Carolina submitted SIP revisions with changes to the NO_X control rules at Regulation 61–62.5, Standard No. 5.2, *Control of Oxides of Nitrogen (NO_X),* dated October 1, 2007; July 25, 2016; September 5, 2017; and February 4, 2022. EPA will address these revisions in a future rulemaking.

[9] *See* 60 FR 63434 (December 11, 1995).

restricted to 100 hours per year as per the Federal regulation, including for testing and maintenance. The change to provide that exemptions from permitting requirements extend to 500 hours of testing and maintenance would have no practical effect on the universe of exempt sources, as detailed above, since all such units are subject to the 40 CFR part 63, subpart ZZZZ. Therefore, this change to subparagraph II(B)(2)(f) will not result in any actual increase in emissions, and therefore, will not interfere with any applicable requirement regarding attainment or reasonable further progress. The State also has the discretion to define the scope of its minor NSR program pursuant to 40 CFR 51.160(e) and has previously determined that these units (with the specified size and hourly operation restrictions) do not need to undergo unique case-by-case permit reviews. Therefore, EPA is proposing to approve these changes to Regulation 61–62.1, subparagraph II(B)(2)(f) into the SIP pursuant to the CAA.

iii. Subparagraph II(B)(2)(h)

The October 1, 2007 submittal also makes changes to subparagraph II(B)(2)(h), formerly subparagraph II(F)(2)(g), by expanding the available exemption from a construction permit to sources with a total uncontrolled emissions rate of less than 1 pound per hour (lb/hr) each of sulfur dioxide, nitrogen oxides (NO_X), and carbon monoxide. These exemptions expand on the current, SIP-approved exemptions that apply to sources with an uncontrolled PM emission rate of less than 1 lb/hr and/or uncontrolled volatile organic compounds (VOCs) emission rate of less than 1,000 lbs/month. The July 18, 2011 submittal adds language to require that emissions calculations or other information necessary to demonstrate that a source qualifies for the exemption must be kept on site and provided to the State upon request.

Next, the August 8, 2014 submittal revises the emissions exemption threshold in subparagraph II(B)(2)(h) in two ways. First, it revises total uncontrolled PTE from 1 lb/hr to 5 ton per year (tpy). Second, it adds language stating that sources with a PTE higher than the 5 tpy applicability threshold may be exempted from the requirement to obtain a construction permit under this subparagraph if the sources demonstrate that they are not subject to any State or Federal limits or requirements. The State provided EPA with a December 30, 2016 letter, addressing the second revision, asserting that it is primarily intended to apply to sources with PTE only slightly above the 5 tpy threshold. The State further asserts that the rule contains a safeguard that sources subject to any applicable regulation, such as Federal requirements, cannot be exempt from obtaining construction permits via this case-by-case process. The letter then steps through an example of the process that small sources of VOC emissions would undergo, including an assessment of any potentially applicable requirements related to NAAQS, toxics, or hazardous air pollutants; consideration of the PTE relative to major NSR thresholds; and any other special considerations. South Carolina contends that it determines the applicability of construction permits for these sources under close scrutiny, on a case-by-case basis. However, the language in this provision from the August 8, 2014 submittal does not prescribe any upper bound on emissions for the case-by-case exemptions from minor NSR permitting, nor does it provide adequate justification for those higher thresholds being exempt from a case-by-case permitting process, and the safeguard therefore cannot cover the universe of possibly exempt sources.

SIPs must contain a minor NSR program with enforceable procedures enabling the State to determine whether the construction or modification of a source will, among other things, interfere with attainment or maintenance of the NAAQS. *See* CAA section 110(a)(2)(C); 40 CFR 51.160(a). These procedures must identify the types and sizes of the sources subject to review, and the SIP must discuss the basis for determining which facilities will be subject to review. *See* 40 CFR 51.160(e). Furthermore, CAA section 110(l) prohibits EPA from approving a SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment, or any other applicable requirement. The language introduced in the August 8, 2014 submittal at subparagraph II(B)(2)(h) appears to be inconsistent with CAA section 110(a)(2)(C), 40 CFR 51.160, and CAA section 110(l) because it would allow the State to exempt sources without determining whether the sources would interfere with the NAAQS, and it does not adequately identify the types and sizes of sources subject to preconstruction review and the basis for determining which sources are subject to review. Because of these concerns, and because EPA cannot evaluate potential NAAQS impacts that may occur from undefined future exemptions from these SIP requirements, EPA is proposing to disapprove changes to subparagraph II(B)(2)(h) from the August 8, 2014 submittal. EPA is also proposing to disapprove the changes to subparagraph II(B)(2)(h) that were requested in the October 1, 2007 submittal because those changes were superseded by the changes in the August 8, 2014 submittal and are no longer state-effective.

The July 18, 2011 submittal makes a distinct change to the rule, which is found in the current, state-effective regulation. The revision adds the sentence ''Emissions calculations and any other information necessary to document qualification for this exemption must be maintained onsite and provided to the Department upon request.'' This revision adds an administrative requirement to show compliance. However, because the change is so closely linked to the changes in the October 1, 2007, and August 8, 2014 submittals, EPA is proposing to disapprove this change as well.[10]

b. Paragraph II(B)(3)

In its October 1, 2007 submittal, South Carolina requested to add paragraph (B)(3) to Section II in its SIP. The new paragraph requires the State to maintain a list of sources exempted under subparagraphs II(B)(2)(a) through II(B)(2)(g) on a list of sources to be exempted without further review, along with any other sources determined to have total uncontrolled emissions less than the thresholds in subparagraph II(B)(2)(h). The list of sources that are exempt without further review from the requirement to obtain a construction permit will be maintained by the Department and periodically published in the *South Carolina State Register* for use by the public and regulated community.

The July 18, 2011 submission revises language in paragraph II(B)(3) to clarify that source types which are added to the list of exempted sources will be determined not to interfere with the attainment or maintenance of any State or Federal standard, replacing the requirement for the list to include sources that have total uncontrolled emissions less than the thresholds in subparagraph II(B)(2)(h). Lastly, the August 8, 2014 submittal includes the addition of language to paragraph II(B)(3) asserting that the State may develop emission thresholds for exemptions that are determined not to

[10] If EPA finalizes disapproval of the changes to subsection II(B) at subparagraph II(B)(2)(h), subparagraph II(F)(2)(g), effective June 24, 2005, would remain in the SIP.

interfere with attainment or maintenance of State or Federal standards to include in the list maintained pursuant to this subparagraph, and that South Carolina could be petitioned to consider adding additional sources to this list.

While EPA notes that South Carolina has inherent flexibility to determine which types and sizes of sources need to undergo preconstruction review and permitting in the State pursuant to 40 CFR 51.160(e), the language introduced in the August 8, 2014 submittal at paragraph II(B)(3) provides the State with the ability to modify the universe of sources subject to the minor NSR program without further regulatory changes and without any basis for determining which facilities will be subject to review. These changes are inconsistent with CAA section 110(a)(2)(C) and 40 CFR 51.160(e) because they do not identify the types and sizes of sources subject to preconstruction review and the basis for determining which sources are subject to review. Furthermore, paragraph II(B)(3) as revised through the August 8, 2014 submittal, is inconsistent with CAA section 110(l), which provides that EPA shall not approve a SIP revision that would interfere with any requirements concerning attainment and reasonable further progress, or any other applicable CAA requirement because EPA cannot evaluate potential future exemptions from these SIP requirements. Therefore, due to these reasons, as well as the enforceability issues described in the above Section II(A)(1)(a)(iii), EPA is proposing to disapprove paragraph II(B)(3).

c. Paragraph II(B)(5)

Paragraph II(B)(5) is a new provision that was added in the August 8, 2014 submittal. The version of paragraph (B)(5) that is in the current SIP is moved to paragraph (B)(6) and is explained below. Paragraph (B)(5), as introduced in the August 8, 2014 submittal, states that sources of VOCs greater than 1,000 lb/month (*i.e.,* the emission threshold listed in subparagraph (B)(2)(h)) may be exempted from the requirement to obtain a construction permit on a case-by-case basis, and that exempt sources may later be required to be included in subsequent construction or operating permits.

Similar to the revised subparagraph (B)(2)(h), the State could grant or deny exemptions from the requirement to obtain a construction permit on a case-by-case basis above SIP-specified thresholds with no upper bound other than the major stationary source or major modification threshold. While EPA notes that the State has inherent flexibility to determine which types and sizes of sources need to undergo preconstruction review and permitting in the State, the language introduced in the August 8, 2014 submittal at paragraph II(B)(5) provides the State with the ability to modify the universe of sources subject to the minor NSR program without further regulatory changes. These changes are inconsistent with CAA section 110(a)(2)(C) and 40 CFR 51.160(e) because they do not identify the types and sizes of sources subject to preconstruction review and the basis for determining which sources are subject to review. Furthermore, paragraph II(B)(5) as introduced in the August 8, 2014 submittal, is inconsistent with CAA section 110(l), which provides that EPA shall not approve a SIP revision that would interfere with any requirements concerning attainment and reasonable further progress, or any other applicable CAA requirement because EPA cannot evaluate potential future exemptions from these SIP requirements. Therefore, EPA is proposing to disapprove paragraph II(B)(5).

d. Paragraph II(B)(6)

Paragraph II(B)(6) was added in the October 1, 2007 submittal as paragraph (B)(5). When the new paragraph (B)(5) was introduced in the August 8, 2014 submittal, the paragraph was moved to (B)(6). This paragraph requires that any new sources similar to those already on the exempted source list established by paragraph II(B)(3), or sources with modifications to existing equipment,[11] must include the following information in their request for exemption: (1) A complete description of the existing equipment and proposed modification; (2) the pollutant(s) being emitted and any deviation from the parameters provided in earlier permit applications, permit exemptions, and issued permits; (3) any ambient air quality demonstrations needed for Regulation 61–62.5, Standards No. 2, *Ambient Air Quality Standards,* No. 7, *Prevention of Significant Deterioration,* and No. 8, *Toxic Air Pollutants;* and (4) a regulatory review to demonstrate the project is not a CAA title I modification, nor is subject to Regulation 61–62.5, Standards No. 7, *Prevention of Significant Deterioration,* and 7.1, *Nonattainment New Source Review (NSR).* EPA is proposing to disapprove paragraph II(B)(6) because it functions only in conjunction with subparagraph II(B)(2)(h) and paragraph II(B)(3), which the Agency is also proposing to disapprove for the aforementioned reasons.

e. Paragraph II(B)(7)

Paragraph II(B)(7) was added in the October 1, 2007 submittal as paragraph (B)(6). When the new paragraph (B)(5) was introduced in the August 8, 2014 submittal, the paragraph was moved to (B)(7). It states that the construction permitting exemptions in subsection II(B) do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. This clarifying statement simply notes that exemption from the requirement to obtain a construction permit under Regulation 61–62.1, Section II does not result in an exemption from any other applicable requirements, such as Federal standards or other requirements under the SIP.

Subsection II(B) was revised in the July 18, 2011 submittal with a two-sentence addition that states that South Carolina reserves the right to require a construction permit and the need for permit(s) will be made by South Carolina on a case-by-case basis, and that the determination will take into consideration, but will not be limited to, the nature and amount of the pollutants, location, proximity to residences and commercial establishments, and other factors. This statement clarifies that, while subsection II(B) generally provides for a list of sources and projects that are exempt from minor NSR and the need to obtain a permit, the State may indeed require a permit. In the July 18, 2011 submittal, the State notes that this provision is intended to allow for requiring a permit in cases ''where other avenues of compliance are ineffective.'' A minor formatting change was also made in the 2014 submittal. Because this provision is clarifying in nature, further describing how the State intends to make use of the exemptions paragraph, and because the provision is consistent with the CAA, EPA is proposing to approve the addition of paragraph II(B)(7) to South Carolina's SIP and the changes to that paragraph discussed above.

2. Subsection II(C)—Construction Permit Applications

Subsection II(C), *Construction Permit Applications,* specifies the requirements for sources applying for and obtaining construction permits. The changes made to subsection II(C) in the submittals from October 1, 2007; June 17, 2013; January 20, 2016; and July 25, 2016, were explained and proposed for

[11] Modifications to existing equipment include the reconstruction, relocation, and replacement of existing equipment, which may qualify for exemption pursuant to subparagraph II(B)(2)(h) and paragraph II(B)(4).

approval in the NPRM published on August 17, 2017. *See* 82 FR 39083. No comments were received on these changes, and EPA is not seeking additional comments here.

The April 24, 2020 submittal adds subparagraph II(C)(2)(d), which provides an exemption from professional engineering review for package-type concrete batch plants that are designed to be hauled to a site, set up, and broken down quickly, with little to no additional equipment needed to manufacture product. The submittal also makes administrative edits to Regulation 61–62.1, subsection II(C) by placing the alphanumeric paragraph titles in parentheses and making minor restructuring edits.

EPA has reviewed the changes made to Regulation 61–62.1, subsection II(C) in the April 24, 2020, submittal and found them to be consistent with CAA sections 110(a)(2)(C) and 110(l). Therefore, EPA is proposing to approve the addition of subparagraph II(C)(2)(d) to South Carolina's SIP.

3. Subsection II(D)—General Construction Permits

In the October 1, 2007 submittal, subsection II(D), *Exceptions,* is moved to subsection II(K) and is discussed subsequently in this document. A new section, *General Construction Permits,* is added in its place. The new subsection II(D) allows the State to develop and issue general construction permits applicable to similar types of sources for new construction projects or minor modifications to existing stationary sources. Subsection II(D) provides for the following: (1) General permits shall incorporate all applicable requirements for construction of similar sources and identify the criteria by which sources can qualify for the permit; (2) sources may submit applications to the State that request coverage under the general permit, and the State shall grant coverage to sources certifying qualification for and agreeing to the conditions and terms of the general construction permit for similar sources; sources later determined not to qualify for the general permit are subject to enforcement; (3) approval to operate under a permit is a final permit action for the purposes of judicial review; (4) the application for coverage may deviate from the provisions of subsection II(C) if enough information is included to determine the source's qualification for, and compliance with, the general permit; and (5) sources qualifying for coverage under general construction permits are able to apply for individual construction permits in lieu of coverage under the general permit.

The August 8, 2014 submittal makes minor restructuring edits to this section. It also adds a new paragraph (2), which states that general construction permits shall incorporate all requirements applicable to the construction of similar sources and shall identify criteria by which sources may qualify for coverage under a general construction permit. Additionally, the August 8, 2014 submittal restructures paragraphs (3) and (4) to move the last sentence of paragraph (3) to its own paragraph (4).

The April 24, 2020 submittal, in addition to minor reformatting revisions, creates two subparagraphs—(3)(a) and (3)(b)—under the title ''Coverage under a General Construction Permit.'' Subparagraph (a) was the entirety of paragraph (3) in the October 1, 2007 submittal. Subparagraph (b) is new language, stating that a source that has submitted an individual construction permit application to the State and has not requested coverage under the conditions and terms of a general construction permit for similar sources—but which is determined to qualify for coverage under a general construction permit—may be granted coverage under the general construction permit at the sole discretion of the State.

While general permits can be an effective method of streamlining permitting requirements and procedures, any general permits developed pursuant to a SIP-approved minor NSR program must meet the Federal minimum requirements. Section II(D), as added in the October 1, 2007 submittal and modified through the April 24, 2020 submittal, does not require any form of public notice and comment prior to the State issuing a general construction permit. While EPA regulations for minor NSR SIPs at 40 CFR 51.160–164 do not use the term general permit or expressly describe general construction permits, EPA interprets the relevant statutory and regulatory provisions to allow State agencies to develop mechanisms such as South Carolina's general construction permits to authorize construction for new minor sources and minor modifications of existing sources, provided that these mechanisms assure that the NAAQS are achieved and meet other applicable regulatory requirements. The rules require ''legally enforceable procedures'' that meet the requirements set forth therein and do not specify that a program to regulate construction must require an individual construction permit for every source. However, the requirements in Federal regulations include a provision that sources (projects) that are subject to the minor NSR program are subject to the public notice procedures in 40 CFR 51.161. 40 CFR 51.161 provides that the legally enforceable procedures in 40 CFR 51.160 must require that the SIP provide for public notice of the information submitted to the State, the State's analysis of the effects of the construction or modification of the project, and the State's proposed decision. In other words, the universe of sources subject to minor NSR procedures pursuant to 40 CFR 51.160, including individual permits and other permitting mechanisms such as general construction permits, would also be subject to public notice procedures in 40 CFR 51.161 prior to issuing the permit. Importantly, in the case of a general permit, once a general permit has met the public notice procedures in 40 CFR 51.161 and is issued in final form, approvals for coverage of individual sources under the general permit are not required to meet the public notice procedures in 40 CFR 51.161 because the issuance of the general permit has already met the requirement. Since South Carolina's general minor construction permits do not follow the public notice procedures in 40 CFR 51.161 when they are initially issued, EPA is proposing to disapprove subsection II(D).

4. Subsection II(E)—Synthetic Minor Construction Permits

Subsection II(E), *Synthetic Minor Construction Permits,* describes provisions for synthetic minor construction permits for any stationary source requesting federally enforceable permit limits to limit a source's PTE so the source does not qualify as a major source (thus becoming a minor source ''synthetically''). The October 1, 2007 submittal moves the current subsection II(E), *Transfer of Ownership/Operation,* to subsection II(M). The *Synthetic Minor Construction Permits Plant* provisions, currently at subsection II(H), are moved in its place and the title is changed to ''*Synthetic Minor Construction Permits.*'' In contrast to the General Construction Permits provisions under subsection II(D), the State rules require an opportunity for public notice and comment on Synthetic Minor Construction Permits under subsection II(E). However, these public participation requirements now refer to and depend on subsection II(N), *Public Participation Procedures,* which was modified from paragraph II(G)(5) in the October 1, 2007 submittal.[12] For the

[12] The SIP-approved version of subsection II(H), *Synthetic Minor Plant Permits,* requires public participation via a cross-reference to paragraph II(G)(5).

reasons explained in Section II.A.10. of this preamble, EPA is proposing to disapprove subsection II(N). Because EPA is proposing to disapprove the changes to move paragraph II(G)(5) to subsection II(N), the updated subsection II(E) would not have a functional cross-reference to those public notice procedures which would therefore have the effect of removing the current requirements for public notice from the synthetic minor construction permits subsection. EPA is therefore proposing to disapprove the entirety of subsection II(E). Specifically, EPA is proposing to disapprove the renumbering of subsection II(H) to subsection II(E) and other changes transmitted in the October 1, 2007, August 8, 2014, July 27, 2016, and April 24, 2020 submittals. The revisions made to subsection II(E) in the submittals from October 1, 2007, August 8, 2014, and July 27, 2016, were explained and proposed for approval in the NPRM published on August 17, 2017. *See* 82 FR 39083. No comments were received on revisions made to paragraphs (E)(1), (E)(2), (E)(3), and (E)(5), and these changes are not further explained here as their proposed disapproval is based solely on the lack of a public notice component. If EPA takes final action on subsection II(E) as proposed, the existing synthetic minor construction permitting portion of the minor NSR program at subsection II(H) in the SIP, State effective June 24, 2005, would continue to function. Other revisions to subsection II(E) which did receive comment or were submitted subsequent to the 2017 NPRM are explained below.

a. Subparagraphs II(E)(4)(a)–(E)(4)(d)

Paragraph II(E)(4) was revised in the October 1, 2007 submittal first by being renumbered from II(H)(3) and being retitled from ''General Permits'' to ''General Synthetic Minor Construction Permits'' to reflect that the specific mechanism under subsection II(E) for establishing general construction permits is to establish general synthetic minor construction permits, which also helps distinguish this from the types of general permits the State intends to create for true minor sources pursuant to new Section II(D). The April 24, 2020 submittal makes administrative and clarifying edits throughout paragraph II(E)(4).

The provision is further revised to update the cross-reference from paragraph II(G)(5) to subsection II(N), which prescribes the required public notice procedures that South Carolina will follow prior to establishing a general synthetic minor construction permit and is further explained in Section II.A.10. of this document. The 2007 revision also adds that sources may submit an application to the State requesting coverage under the conditions and terms of a general synthetic minor construction permit for similar sources, and the State shall grant coverage to sources certifying qualification for and agreeing to the conditions and terms of the general synthetic minor construction permit for similar sources. Subsequently, the August 8, 2014 submittal makes formatting changes to subparagraph (E)(4)(a) by breaking into four subparagraphs—(E)(4)(a) through (d)—without changing the wording of the rules. After the changes, subparagraphs (E)(4)(a)–(d) would allow the State to issue a general synthetic minor construction permit applicable to similar sources after providing notice and opportunity for public participation under subsection II(N).

EPA has reviewed these changes made to Regulation 61–62.1, subparagraph II(E)(4)(a) and they appear to be consistent with CAA sections 110(a)(2)(C) and 110(l). However, due to the proposed disapproval of subsection II(N) as described below, the revised subsection II(E) lacks the public participation component required under 40 CFR 51.161. Therefore, EPA is proposing to disapprove the changes to South Carolina's SIP at Regulation 61–62.1, subparagraph II(E)(4)(a).

b. Subparagraph II(E)(4)(c)

The April 24, 2020 submittal makes further edits to subparagraph II(E)(4)(c) by breaking up the subparagraph into two parts. The first part, II(E)(4)(c)(i), was the entirety of the subparagraph as reformatted in the 2014 submittal. The second part, II(E)(4)(c)(ii), introduces a new provision that gives South Carolina sole discretion to grant coverage under a general synthetic minor construction permit for a source that has not requested such coverage, but has submitted an individual synthetic minor construction permit application and the State has determined qualifies for a general synthetic minor construction permit for similar sources.

The April 24, 2020 submittal notes that this reflects current permitting practices for the State and is intended to streamline the application process. It explains that there may be situations where a source has submitted a synthetic minor construction permit application and is unaware of the available general synthetic minor construction permit. In this scenario, if the proposed project qualifies for an issued general synthetic minor construction permit, the State would not require the source to submit a separate request for coverage under the corresponding general synthetic minor permit. The State would, on its own initiative, process the application as an application for coverage under the general synthetic minor construction permit. EPA believes that this flexibility reflects inherent discretion that the State has within its program to process applications in an efficient manner and is reasonable given that the source has provided enough information for the State to determine that the project would qualify under the general construction permit.

EPA has reviewed these changes made to Regulation 61–62.1, subparagraph II(E)(4)(c), and they appear to be consistent with CAA sections 110(a)(2)(C) and 110(l). However, due to the proposed disapproval of subsection II(N) as described below, the revised subsection II(E) lacks the public participation component required under 40 CFR 51.161. Therefore, EPA is proposing to disapprove these changes to South Carolina's SIP at Regulation 61–62.1,subparagraph II(E)(4)(c).

c. Subparagraph II(E)(4)(e)

The October 1, 2007 submittal rewrites and simplifies subparagraph (E)(4)(b), which is relettered in the August 8, 2014 submittal to become (E)(4)(e). The 2007 submittal provides the State authority to grant a source's request for authorization to operate under a general permit without further public notice and says that such a grant shall be a final permit action for purposes of judicial review. The changes made in the October 1, 2007 submittal also removes a redundant sentence that essentially re-stated this and made an additional cross-reference to the public notice procedures. Subsequently, the April 24, 2020 submittal makes minor changes to subparagraph (E)(4)(e) to clarify that the coverage is available for ''general synthetic minor construction'' permits rather than ''general'' permits.

EPA has reviewed these changes made to Regulation 61–62.1, subparagraph II(E)(4)(e) and they appear to be consistent with CAA sections 110(a)(2)(C) and 110(l). However, due to the proposed disapproval of Subsection II(N) as described below, the revised subsection II(E) lacks the public participation component required under 40 CFR 51.161. Therefore, EPA is proposing to disapprove the aforementioned changes to South Carolina's SIP at Regulation 61–62.1, subparagraph II(E)(4)(e).

d. Subparagraph II(E)(4)(g)

The April 24, 2020 submittal adds new subparagraph (E)(4)(g), which states that a source that qualifies for coverage under a general synthetic minor construction permit may submit a construction permit application to the State and request an individual synthetic minor construction permit in lieu of coverage under a general synthetic minor construction permit.

South Carolina had similar language included in subsection II(D) of the State effective version of Regulation 61–62.1 for general permits since the October 1, 2007 submittal. The State notes that an aim of its submittal is to improve consistency in language for general and registration permits. This provision acknowledges that sources can request that the State issue an individual synthetic minor permits in lieu of coverage under a corresponding general synthetic minor construction permit. This language states that use of a general synthetic minor construction permit is not required, and the State will consider the preference of the source.

EPA has reviewed these changes made to Regulation 61–62.1, subparagraph II(E)(4)(g) and they appear to be consistent with CAA sections 110(a)(2)(C) and 110(l). However, due to the proposed disapproval of subsection II(N) as described below, the revised subsection II(E) lacks the public participation component required under 40 CFR 51.161. Therefore, EPA is proposing to disapprove the aforementioned changes to South Carolina's SIP at Regulation 61–62.1, subparagraph II(E)(4)(g).

5. Subsection II(F)—Operating Permits

Subsection II(F), *Operating Permits,* describes provisions for minor operating permits for any true minor stationary source, meaning those sources smaller than the major source thresholds at Regulation 61–62.70, *Title V Operating Permit Program,* and which do not need federally enforceable emission limits to restrict PTE to avoid title V major source status pursuant to subsection II(G). The October 1, 2007 submittal adds a new subsection II(F), *Operating Permits,* in place of former subsection II(F), *Exemptions,* which is renumbered to subsection II(B). In contrast to subsection II(G), *Conditional Major Operating Permits,* subsection II(F) does not require an opportunity for public notice and comment on the covered minor source operating permits.[13] EPA does not require States to submit minor source operating permit programs to the Agency for incorporation into their SIPs; however, EPA set forth criteria for the approvability of such programs into SIPs in a June 28, 1989 final rule. *See* 54 FR 27274. Among EPA's criteria for an approvable program is that the operating permits are subject to public participation prior to issuance, which is not the case under subsection II(F). *See id.* at 27282. EPA is therefore proposing to disapprove the entirety of subsection II(F). Specifically, EPA is proposing to disapprove the addition of subsection II(F) transmitted in the October 1, 2007 submittal and other changes made in the August 8, 2014; July 27, 2016; and April 24, 2020.[14] The revisions made to subsection II(F) in the submittals from October 1, 2007; August 8, 2014; and July 27, 2016 submittals were explained and proposed for approval in the NPRM published on August 17, 2017. *See* 82 FR 39083. No comments were received on the addition of, and changes made to, subsection II(F), and these paragraphs and changes to subsection II(F) are not further explained here as their disapproval is based not on the content of the changes but on the lack of a public notice component. The April 24, 2020 submittal makes several subsequent changes to subsection II(F), as discussed below.

a. Paragraphs II(F)(2) and (F)(3)

The April 24, 2020 submittal adds subparagraph II(F)(2) to distinguish a specific situation for sources awaiting the issuance of an operating permit from the State. Paragraph II(F)(3), as renumbered from II(F)(2) in this submittal, provides that the professional engineer in charge of the project shall certify that the construction completed under the corresponding construction permit has been completed in accordance with the construction permit and application. This provision allows for the source to operate under the issued construction permit until the State has issued the operating permit if the certification is provided by the engineer. If, however, the construction is not completed in accordance with the permit application and construction permit, this provision requires the owner or operator to submit a description of the modifications from the permit prior to commencing operation. The provision further requires that any construction variances that would trigger additional requirements that have not been addressed prior to commencing operation will be treated as construction without a permit for compliance purposes.

The April 24, 2020 submittal also adds the phrase ''when a Department issued construction permit includes engineering and/or construction specifications'' to clarify that this provision is intended to function for projects with unique engineering and construction requirements. The new paragraph II(F)(2) covers situations for which construction permits do not include engineering and/or construction specifications for the project. Specifically, this subparagraph allows for these sources to operate under the issued construction permit until the State issues the operating permit. In applicable situations, there are no engineering or construction specifications that the professional engineer would need to certify. Regardless of the type of minor source construction project, these minor source operating permits must be applied for within 15 days of initial startup. This addition, therefore, is a clarification that not all minor source construction permits will need certification from a professional engineer. However, as discussed above, EPA is proposing to disapprove the entirety of subsection II(F) due to a lack of public notice procedures. Therefore, EPA is proposing to disapprove these changes to South Carolina's SIP at Regulation 61–62.1, paragraphs II(F)(2) and (F)(3).

b. Paragraph II(F)(5)

The April 24, 2020 submittal also adds an entire section on the ability to develop general minor source operating permits at paragraph II(F)(5). However, similar to Section II(D) for general minor source construction permits, paragraph II(F)(5) would allow for the development and issuance of general true minor source operating permits without first going through public notice and comment. As noted above, States are not required to include minor source operating permit programs in their SIPs, and EPA has identified criteria, including public participation, for approving minor source operating permits into SIPs for those States that elect to submit a program to EPA for incorporation.

EPA has evaluated the changes to subsection II(F) transmitted in the April 24, 2020, submittal and found them to

[13] EPA approved subsection II(G) into the SIP because, among other things, it provides EPA and the public with timely notice of the proposal and issuance of such permits; provides EPA, on a timely basis, with a copy of each proposed (or draft) and final permit; and provides for an opportunity for public comment on the permit applications prior to issuance of the final permit. *See* 60 FR 63434, 63435 (December 11, 1995).

[14] Final disapproval of subsection II(F) and changes to subsection II(B) at subparagraph II(B)(2)(h) would leave in place a portion of subsection II(F), *Exemptions,* at subparagraph II(F)(2)(g), State effective June 24, 2005.

be inconsistent with EPA's criteria for approving minor source operating permit programs into SIPs. Therefore, EPA is proposing to disapprove the ability to create general minor source operating permits at paragraph II(F)(5).

6. Subsection II(G)—Conditional Major Operating Permits

Subsection II(G), *Conditional Major Operating Permits,* describes provisions for synthetic minor operating permits for any stationary source requesting federally enforceable permit limits to limit a source's PTE so the source does not qualify as a major source (thus becoming a minor source ''synthetically''). As noted above, EPA set forth criteria for approval of minor source operating permits in its June 28, 1989 final rule. *See* 54 FR 27274. EPA evaluated these criteria, including adequate public notice procedures, and approved subsection II(G) for conditional major (synthetic minor) operating permits in its December 11, 1995 final rule. *See* 60 FR 63434. However, these public participation requirements now refer to and depend on subsection II(N), *Public Participation Procedures,* which was modified from paragraph II(G)(5) in the October 1, 2007 submittal.[15] For the reasons explained in Section II.A.10. of this document, EPA is proposing to disapprove subsection II(N). Because EPA is proposing to disapprove the changes that include moving paragraph II(G)(5) to subsection II(N), the updated subsection II(G) would not have a functional cross-reference to applicable public notice procedures and would therefore have the effect of removing the current requirements for public notice from the conditional major operating permits subsection. EPA is therefore proposing to disapprove the changes to subsection II(G). Specifically, EPA is proposing to disapprove the changes transmitted in the October 1, 2007; July 18, 2011; August 8, 2014; July 27, 2016; and April 24, 2020 submittals. The revisions made to subsection II(G) in the submittals from October 1, 2007; July 18, 2011; August 8, 2014; and July 27, 2016 submittals were explained and proposed for approval in the NPRM published on August 17, 2017. *See* 82 FR 39083. No comments were received on revisions made to subsection II(G), and these changes are not further explained here as their proposed disapproval is based solely on the lack of a public notice component. If EPA takes final action as proposed, the existing SIP-approved conditional major operating permitting program at subsection II(G) in the SIP, State effective June 24, 2005, would continue to function. Other revisions to subsection II(G) which were submitted subsequent to the August 17, 2017 NPRM are explained below.

a. Subparagraph II(G)(2)(d)

The April 24, 2020 submittal removes subparagraph II(G)(2)(d), which was added to II(G)(2)(c) in the October 1, 2007 submittal and restructured to II(G)(2)(d) in the August 8, 2014 submittal.[16] Subparagraph II(G)(2)(d) would allow the owner or operator to continue operating a source pursuant to the most recent conditional major operating permit after submitting a request for renewing its operating permit until the State acts on the permit application. The renewal request must meet requirements in subsection II(H). Subparagraph II(G)(2)(d) is removed, but a substantially similar provision allowing the owner or operator to continue operating a source if a timely renewal application for any operating permit meeting the requirements of subsection II(H) is introduced at subparagraph II(H)(1) in the April 24, 2020 submittal. This is discussed further under changes to subsection II(H) below. For the purposes of subparagraph II(G)(2)(d), removing this provision from subsection II(G) and including the same requirement at subsection II(H) concerning operating permit renewal requests is reasonable because the provision merely requires any request for renewal of conditional major operating permits to comply with requirements in subsection II(H) in order for the source to continue operating while awaiting State action on its timely application. However, due to the disapproval of subsection II(N) as described below, subsection II(G) lacks the public participation component which was a basis for EPA's approval of subsection II(G) into the SIP. EPA is therefore proposing to disapprove this change to subparagraph II(G)(2)(d).

b. Subparagraph II(G)(7)(c)

The April 24, 2020, submittal breaks subparagraph (G)(7)(c) into two parts. Subparagraph (G)(7)(c)(i) is a reformatting of the language introduced in the August 8, 2014 submittal. The new provision in the April 24, 2020 submittal is at subparagraph (G)(7)(c)(ii). It states that a source that has submitted an individual permit application to the State and has not requested coverage under the conditions and terms of a general conditional major operating permit for similar sources, but which is determined to qualify for coverage under a general conditional major operating permit, may be granted coverage under the general conditional major operating permit at the sole discretion of the State.

The April 24, 2020 submittal notes that this reflects current permitting practices for South Carolina and is intended to streamline the application process. It explains that there may be situations where a source has submitted an individual conditional major operating permit application and is unaware of the available general conditional major operating permit. In this scenario, if the proposed project qualifies for an issued general conditional major operating permit, the State would not require the source to submit a separate request for coverage under the corresponding general conditional major operating permit. The State would, on its own initiative, process the application as an application for coverage under the general conditional major operating permit. EPA has reviewed these changes made to Regulation 61–62.1, subparagraph II(G)(7)(c) and they appear to not be inconsistent with EPA's criteria for federally enforceable operating permits. EPA believes that the flexibility in the State's rule reflects inherent discretion that the State has within its program to process applications in an efficient manner and is reasonable if the source has provided enough information for the State to determine that the project would qualify under the general conditional major operating permit. However, due to the proposed disapproval of subsection II(N) as described below, subsection II(G) lacks the public participation component which was a basis for EPA's approval of subsection II(G) into the SIP. Therefore, EPA is proposing to disapprove these changes to South Carolina's SIP at Regulation 61–62.1, subparagraph II(G)(7)(c).

c. Subparagraph II(G)(7)(g)

The April 24, 2020 submittal adds subparagraph (G)(7)(g), which states that a source that qualifies for coverage under a general conditional major operating permit may submit a permit application to the State and request an individual conditional major operating permit in lieu of coverage under a general conditional major operating permit. The State had similar language included in Section II(D) for general permits since the October 1, 2007 submittal. The State notes that an aim

[15] The revision to subsection II(G) would move the public participation provision at II(G)(5) to II(N) and include a cross-reference to (II)(N) within II(G).

[16] Subparagraph II(G)(2)(d) has not been approved into the SIP.

of its submittal is to improve consistency in language for general and registration permits. This provision acknowledges that sources can request that the State issue an individual conditional major operating permit in lieu of coverage under a corresponding general conditional major operating permit. This language states that use of a general conditional major operating permit is not required, and that the State will consider the preference of the source. EPA has reviewed these changes made to Regulation 61–62.1, subparagraph II(G)(7)(g) and they appear found them to not be inconsistent with EPA's criteria for federally enforceable operating permits. However, due to the proposed disapproval of subsection II(N) as described below, subsection II(G) would lack the public participation component which was a basis for EPA's approval of subsection II(G) into the SIP. Therefore, EPA is proposing to disapprove the aforementioned changes to South Carolina's SIP at Regulation 61–62.1, subparagraph II(G)(7)(g).

7. Subsection II(H)—Operating Permit Renewal Requests

South Carolina's October 1, 2007; July 18, 2011; June 17, 2013; August 8, 2014, and July 27, 2016 submittals revised subsection II(H), *Operating Permit Renewal Requests,* which specifies requirements for requesting renewals of operating permits for sources which are not subject to the State's title V program at Regulation 61–62.70. Those changes to former paragraph II(B)(2), recodified to subsection II(H) in the October 1, 2007, submittal, were reviewed and proposed for approval in the August 17, 2017 NPRM and are not further discussed here. *See* 82 FR 39083. The April 24, 2020 submittal makes several subsequent changes to subsection II(G), as discussed below.

First, subparagraph II(H)(1) is added. This subparagraph would allow the owner or operator to continue operating a source pursuant to the most recent conditional major operating permit after submitting a request for renewing its operating permit until South Carolina takes final action on the request for renewal. The renewal request must meet requirements in subparagraphs II(H)(2)–(5), as renumbered from (H)(1)–(4).

Next, subparagraph II(H)(5), formerly II(H)(4), is revised to include requirements that the name, mailing address, email address, and telephone number of both the owner or operator of the facility and the permit contact person for the facility be included in the renewal application. Finally, minor edits are made throughout subsection II(H), including placing the alphanumeric provision dividers in parentheses. The changes to subsection II(H) in the April 24, 2020 submittal are reasonable changes make to these renewal provisions for operating permits. The ability for the source to continue to operate under the previously issued operating permit if a timely renewal submittal has been made and the State has not yet acted to issue the renewal permit functions like the permit application shield provisions under the Federal title V operating permitting program for major sources at 40 CFR part 70 and approved for South Carolina at Regulation 61–62.70. The remaining changes to subsection II(H) in this submittal are either ministerial or minor in nature, such as requiring additional information to be included in the renewal request compared to what is presently required in the SIP and what EPA also previously proposed to approve in this recodified subsection in the August 17, 2017 NPRM. EPA has reviewed these changes made to Regulation 61–62.1, subsection II(H) and found them to not be inconsistent with EPA's criteria for federally enforceable operating permits, and to be consistent with similar provisions for Federal provisions for major source operating permits. Therefore, EPA is proposing to approve the aforementioned changes to South Carolina's SIP at Regulation 61–62.1, subsection II(H). EPA notes that the effect of approving subsection II(H), *Operating Permit Renewal Requests,* as renumbered from paragraph II(B)(2), while disapproving the changes to existing subsection II(H), *Synthetic Minor Plant Permits,* would create a second subsection II(H) in the SIP. If both proposed actions are finalized, the provisions for subsection II(H), *Synthetic Minor Plant Permits,* would retain the June 24, 2005 State effective date, and the provisions for subsection II(H), *Operating Permit Renewal Requests,* would have a April 24, 2020 State effective date.

8. Subsection II(I)—Registration Permits

Subsection II(I), *Registration Permits,* prescribes regulations by which South Carolina can issue registration permits that cover construction and operation of similar types of stationary sources. The October 1, 2007 submittal introduces the new subsection (I) to Section II. South Carolina explains that the difference between registration permits and general construction permits or general operating permits is that registration permits are permits issued for stationary sources that that fall within a specified industrial grouping or sector and have the PTE less than the threshold for major NSR or title V applicability (*i.e.,* they are true minor sources).[17] The equipment similarities within the grouping or sector remove the need for in depth site-specific review. In contrast, general construction permits pursuant to subsection II(D) could be for any source that meets criteria across sections (*e.g.,* similar units, overall emissions threshold).

The July 18, 2011 submittal makes subsequent changes to subsection II(I) as follows: (1) Makes administrative edits; (2) adds language to assert that, regardless of qualification for registration permits, South Carolina reserves the right to require individual construction and operating permits, as determined on a case-by-case basis; and (3) changes language to clarify that registration permits shall contain any applicable permit conditions under subsection II(J), rather than all permit conditions listed in subsection II(J), as the State finds appropriate.

The August 8, 2014 submittal includes other changes to paragraph II(I), including administrative edits throughout and adding language to assert that the State can reopen registration permits for cause or to include new standards or regulations that become applicable during the lifetime of the permit. The August 8, 2014 submittal also removes language at subparagraph (I)(1)(a) requiring the State to provide notice and opportunity for public participation prior to developing new registration permits. However, the State withdrew this change from EPA's consideration in a letter dated August 7, 2017. In the letter, the State explained that its intent in withdrawing the change was to require the Department to comply with the public participation procedures at subsection II(N) when developing registration permits.[18]

South Carolina has added subsection II(I) to the permitting program to allow for the creation of a subcategory of general permits called registration construction and/or operating permits, which would be for certain industry categories of qualifying true minor sources. This permitting mechanism is intended to streamline permitting requirements and procedures. Any general permits developed pursuant to a SIP-approved minor NSR program must meet the Federal minimum requirements. Unlike the general minor

[17] The State references Regulation 61–62.70, Title V Operating Permit Program; Regulation 61–62.5, Standard No. 7, Prevention of Significant Deterioration; and Regulation 61–62.5, Standard No. 7.1, Nonattainment New Source Review, which prescribe requirements for major sources for the construction and operating permit programs.

[18] The August 7, 2017, withdrawal letter is available in the docket for this NPRM.

NSR permits provided for at Section II(D) of Regulation 61–62.1, subsection II(I) would require public notice and comment in developing the general construction and/or operating permits. However, these public participation requirements refer to and depend on subsection II(N), *Public Participation Procedures,* which was moved and modified from paragraph II(G)(5) in the October 1, 2007 submittal. For the reasons explained in Section II.A.10. of this document, EPA is proposing to disapprove subsection II(N). Because EPA is proposing to disapprove the changes to move paragraph II(G)(5) to subsection II(N), the new subsection II(I) would not have a functional cross-reference to those public notice procedures in the SIP as the State intends. EPA is therefore proposing to disapprove the entirety of subsection II(I). Specifically, EPA is proposing to disapprove the addition of subsection II(I) and subsequent changes transmitted in the October 1, 2007, July 18, 2011, August 8, 2014, and April 24, 2020 submittals. The revisions made to subsection II(I) in the submittals from October 1, 2007; July 18, 2011; and August 8, 2014 submittals were explained and proposed for approval in the NPRM published on August 17, 2017. *See* 82 FR 39083. However, EPA received adverse comments on subsection II(I). Other revisions to subsection II(I) which were submitted subsequent to the August 17, 2017 NPRM are explained below.

a. Subparagraph II(I)(2)(a)(ii)

The April 24, 2020 submittal breaks subparagraph (I)(2)(a) into two parts. The first part—(I)(2)(a)(i)—revises and clarifies language from (I)(2)(a). The second part—(I)(2)(a)(ii)—gives the State sole discretion to grant coverage under a registration permit to a qualifying source that applied for a construction and operating permit under Sections II(A) and II(F) even if the source did not request coverage under the registration permit.

The April 24, 2020 submittal notes that this reflects current permitting practices for the State and is intended to streamline the application process. It explains that there may be situations where a source has submitted a minor construction permit application and is unaware of the available registration minor construction permit. In this scenario, if the proposed project qualifies for an issued registration minor construction permit, the State would not require the source to submit the separate request for coverage under the corresponding registration minor permit. The State would, on its own initiative, process the application as an application for coverage under the general conditional major operating permit. EPA has reviewed these changes made to Regulation 61–62.1, subparagraph II(I)(2)(a)(ii) and they appear to be consistent with CAA sections 110(a)(2)(C) and 110(l) and 40 CFR 51.160–164. EPA believes that this flexibility reflects inherent discretion that the State has within its program to process applications in an efficient manner and is reasonable given that the source has provided enough information for the State to determine that the project would qualify under the registration (general) permit. However, due to the proposed disapproval of subsection II(N) as described below, this provision lacks the public participation component required under 40 CFR 51.161. Therefore, EPA is proposing to disapprove these changes to South Carolina's SIP at Regulation 61–62.1, subparagraph II(I)(2)(a)(ii).

b. Subparagraph II(I)(2)(e)

South Carolina's April 24, 2020 submittal adds subparagraph (I)(2)(e), which states that a source that qualifies for coverage under a registration permit may submit a permit application to the State and request an individual permit in lieu of coverage under a general registration permit.

South Carolina had similar language in Section II(D) for general permits since the October 1, 2007 submittal. South Carolina notes that an aim of its April 24, 2020, submittal is to improve consistency in language for general and registration permits. This provision acknowledges that sources can request that the State issue an individual minor construction permit in lieu of coverage under a corresponding registration (general) minor construction permit. This language notes that use of a registration minor construction permit is not required and that the State will consider the preference of the source. EPA has reviewed these changes to Regulation 61–62.1, subparagraph II(I)(2)(e) and they appear to be consistent with CAA section 110. However, due to the proposed disapproval of subsection II(N) as described below, this provision lacks the public participation component required under 40 CFR 51.161. Therefore, EPA is proposing to disapprove the aforementioned changes to Regulation 61–62.1, subparagraph II(I)(I)(2)(e).

9. Subsection II(K)—Exceptions

Regulation 61–62.1, subsection II(K) sets forth factors that the State will consider in determining whether to impose alternative emissions limits, compliance schedules, or other restrictions. The October 1, 2007 submittal makes non-substantive changes to this subsection, including moving subsection II(K), *Exceptions,* from subsection II(D) and makes minor administrative and typographical changes. This provision says that this subsection does not apply to mass emission limitations imposed by Federal New Source Performance Standards, Federal National Emissions Standards for Hazardous Air Pollutants, Federal or State PSD regulations, or any nonattainment requirements. Therefore, the provisions in subsection II(K) cannot be utilized for changing any emission limits set via those requirements. Subsection II(K) also requires an air quality demonstration to revise emission limits or visibility standards. Any alternative compliance schedules requested would need to provide for compliance with the applicable regulations as expeditiously as practicable. Finally, the exceptions from otherwise previously established restrictions on operation would be subject to public notice and opportunity for a public hearing. The April 24, 2020 submittal makes formatting changes by placing the alphanumeric provision dividers in parentheses.

EPA has reviewed these non-substantive changes made to subsection II(K), *Exceptions,* and found them to be consistent with CAA sections 110(a)(2)(C) and 110(l) and 40 CFR 51.160–164. This process for establishing alternative permit conditions, compliance schedules, or other restrictions on operation of a source, which is already part of the SIP, provides for a substantive evaluation of the impacts of making the changes to otherwise applicable requirements. These provisions effectively require substantively similar provisions to the issuance of a construction permit to approve the exceptions to previously established permit terms. Therefore, EPA is proposing to approve the aforementioned changes to Regulation 61–62.1, subsection II(K), into the SIP.

10. Subsection II(N)—Public Participation Procedures

The October 1, 2007 submittal makes changes to the public notice provisions in Section II, as follows. SIP-approved subparagraph II(G)(5) is moved from under the subsection titled *Conditional Major Operating Permits* [19] to a new

[19] One of the revisions to subsection in the October 1, 2007, submittal was retitling subsection G from ''*Conditional Major Source Permits*'' to ''*Conditional Major Operating Permits.*''

standalone subsection at II(N) titled *Public Participation Procedures.* The submittal adds the following language providing the State with discretion to require notice of permitting activity, even when not otherwise required by the State's regulations: ''When determined to be appropriate by the Department (or specified by regulation) notice of permitting activity shall be provided to the public and other entities for their review and comment.'' SIP-approved Section II only requires public notice for conditional major (operating) permits and synthetic minor (construction) permits. By adding this new language and moving the public participation procedures to a new standalone paragraph, the rule expands the types of permits potentially subject to public notice. The October 1, 2007 submittal also adds language stating that the State may use means other than publishing in newspapers, the *State Register,* and mailing lists to notify the public of minor source permitting.

The July 18, 2011 submittal removes the phrase ''or operating'' from the restriction in subparagraph II(N)(5) that prevents sources from commencing any construction prior to completing the required public participation procedures because the State authorizes construction via a construction permit rather than a minor source operating permit. Sources are required by Regulation 61–62.1 subparagraph II(F)(4)(b) to submit a postmarked written application for minor source operating permits within 15 days after the actual date of initial startup of each new or modified source.

Next, the August 8, 2014 submittal modifies paragraph (N)(1) to add the Department's website as another option for notifying the public of permitting activity in addition to newspapers and the *South Carolina State Register.*[20] The submittal then changes paragraph (N)(2) to restructure the required elements of the public notice into new subsections, (a) through (g). The submittal also revises language and adds subparagraphs (a) and (b) to paragraph (N)(3) to identify how the State will address and record comments, and broadens the State's procedures to require the State to consider all comments received at any public hearing rather than only those received in writing at a public hearing.[21] The August 8, 2014 revision to paragraph (N)(3) also removes language requiring the State to provide a written response to all written comments received by mail and at the public hearing, providing that all comments received within the time specified in the public notice will be considered, and that the State will maintain a record of commenters and the comments made.

Finally, the April 24, 2020 submittal revises paragraph (N)(1) to change the option to post on the Department's website to an option to post on a public website identified by the Department. The submittal also makes minor and ministerial changes to paragraph (N)(1), including to note that ''additional means of public notice'' may include public meetings. This submittal also changes the word ''other'' to ''additional'' means of public notice, to clarify that the other methods are required, while avenues like public meetings can also be used on a case-by-case basis.

The changes in the October 1, 2007 submittal to allow for other methods of public notice, and in the April 24, 2020 submittal to explicitly list a public website identified by the Department as a possible method of public notice, are consistent with the minor NSR public notice regulations at 40 CFR 51.161.[22] The Department can therefore make use of a website, public hearings, and other methods in lieu of or in addition to publication in a newspaper. The provisions at subsection II(N) prescribe generally applicable public notice procedures, and additional public notice requirements are contained in the major NSR and major operating permit (title V) regulations at Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration (PSD),* 61–62.5, Standard No. 7.1, *Nonattainment New Source Review (NSR),* and 61–62.70, *Title V Operating Permit Program.*

While the changes to the public notice requirements in the October 1, 2007 submittal applying public notice procedures to permitting activities beyond conditional major (operating) permits and synthetic minor (construction) permits at the State's discretion are an improvement, they do not fully satisfy the public notice procedures in 40 CFR 51.161. The Federal regulations provide that the legally enforceable procedures in 40 CFR 51.160 must require that the State provide for opportunity for public comment on the information submitted to the State by owners and operators, the State's analysis of the effects of the construction or modification of the project, and the State's proposed decision. In other words, in order for the SIP to meet the public notice requirements in 40 CFR 51.161, all of the projects that South Carolina determines are subject to minor NSR procedures pursuant to 40 CFR 51.160(e) need to be subject to public notice procedures prescribed in the SIP. While the changes transmitted in the October 1, 2007 submittal may increase the level of public participation in the minor NSR program, subsection II(N) as submitted, and as modified further in the July 18, 2011; August 8, 2014; and April 20, 2020 submittals, does not meet the minimum requirements in 40 CFR 51.160 and 51.161. Accordingly, EPA is proposing to disapprove subsection II(N).

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section II of this preamble, EPA is proposing to incorporate by reference South Carolina Regulation 61–62.1, Section II, *Permit Requirements,* State effective April 24, 2020, except for the following: subsection II(G), which is incorporated by reference with a State effective version of June 24, 2005; subsection II(B) at paragraph II(B)(2)(h); subsection II(B) at paragraph II(B)(3); subsection II(B) at paragraph II(B)(5); subsection II(B) at paragraph II(B)(6); subsection II(D); subsection II(F), except for the title and subparagraph II(F)(2)(g), which are incorporated by reference with a State effective date of June 24, 2005; and subsection II(I).[23] 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).

[20] In addition to the publication outlets, the SIP-approved regulation requires the State to notify persons who requested in writing to be on a mailing list, as well as others on a mailing list developed by the State.

[21] The SIP-approved regulation also requires the State to consider and provide a written response to all written comments received by mail within the time specified for the public comment period.

[22] EPA has previously noted that the public notice requirement at 40 CFR 51.161(b)(3) is media neutral, and EPA modified 40 CFR 51.161 in an October 18, 2016, final rule to specifically allow for electronic notice of the draft permit and other information, including for synthetic minor sources. *See* 81 FR 71613.

[23] If EPA finalizes disapproval of subsection II(E), *Synthetic Minor Construction Permits,* subsection II(H), *Synthetic Minor Plant Permits,* State effective June 24, 2005, would remain in the SIP. Additionally, final approval of subsection II(H), *Operating Permit Renewal Requests,* State effective April 24, 2020, would result in two subsections II(H) within into the SIP.

IV. Proposed Action

EPA is proposing to approve the portions of the SIP revisions consisting of the following changes: parenthesizing of the lettering and numbering of the titles of the sections and spelling out certain words instead of using numerical notation in Regulation 61–62.1, Section II, *Permit Requirements,* in the April 24, 2020, submittal; the aforementioned changes to Regulation 61–62.1, subsection II(B), except for subparagraph II(B)(2)(h), and paragraphs II(B)(3), II(B)(5), or II(B)(6); the changes to subsection II(C); the addition of and changes to subsection II(H), and the restructuring of and changes to subsection II(K). EPA is proposing to approve the aforementioned changes to the SIP for the reasons discussed in Section II of this document.

For the aforementioned reasons, EPA is also proposing to disapprove the portions of the South Carolina SIP revisions consisting of changes to: Regulation 61–62.1, subsection II(B) at paragraph (2)(h); paragraphs II(B)(3), II(B)(5), and II(B)(6); the addition of and changes to subsection II(D); the restructuring of and changes to subsection II(E);[24] the addition of and changes to subsection II(F);[25] the addition of and changes to subsection II(I); and the restructuring of and changes to subsection II(N).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 review State choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this proposed approval proposes to partially approve and partially disapprove a SIP submission as meeting or not meeting Federal requirements, respectively, and does not impose additional requirements beyond those imposed by State law.

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

[24] See footnote 21.

[25] Final disapproval of subsection II(F) and subparagraph II(B)(2)(h) would leave subparagraph II(F)(2)(g), State effective June 24, 2005, in the SIP.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This proposed 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 proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this proposed action will not have a significant economic impact on a substantial number of small entities under the RFA. This proposed action will not impose any requirements on small entities because it merely partially approves and partially disapproves a SIP submission as meeting or not meeting Federal requirements, respectively.

D. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The proposed action imposes no enforceable duty on any State, local or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Because this proposed action merely partially approves and partially disapproves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law, this proposed action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (Settlement Act), ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant State and local agencies and authorities.'' The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by State law or local governing bodies, in accordance with the Settlement Act.

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 proposed action is not subject to Executive Order 13045 because it merely proposed to partially approve and partially disapprove a SIP submission as meeting or not meeting Federal requirements, respectively. Furthermore, EPA's Policy on Children's Health does not apply to this action.

H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

This proposed 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 proposed rulemaking does not involve technical standards.

J. Executive Order 12898 and Executive Order 14096: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations and Revitalizing Our Nation's Commitment to Environmental Justice for All

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 communities with EJ concerns to the greatest extent

practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as among other things, the just treatment and meaningful involvement of all people regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

South Carolina 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 proposed action. Due to the nature of the proposed action being taken here, this proposed 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. 12898/14096 of achieving EJ for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

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

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

Dated: January 6, 2025.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2025–00438 Filed 1–17–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[EPA–HQ–OW–2024–0328; FRL 11799–01–OW]

RIN 2040–AG37

Clean Water Act Methods Update Rule 22 for the Analysis of Contaminants in Effluent

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to promulgate new methods and update the tables of approved methods for the Clean Water Act. The Clean Water Act requires the EPA to promulgate test procedures for the analysis of pollutants. Promulgating new methods and updating the tables of approved methods increases the quality and consistency of data collected for the purposes of the Clean Water Act. In this rule, the EPA proposes to add new EPA methods for per- and polyfluoroalkyl substances (PFAS) and polychlorinated biphenyl (PCB) congeners, and add methods previously published by voluntary consensus bodies that industries and municipalities would use for reporting under the EPA's National Pollutant Discharge Elimination System permit program. The EPA also proposes to withdraw the seven Aroclor (PCB mixtures) parameters. In addition, the EPA is proposing to simplify the sampling requirements for two volatile organic compounds, and make a series of minor corrections to existing tables of approved methods. This proposed rule does not mandate when a parameter must be monitored or establish a discharge limit.

DATES: Comments must be received on or before February 20, 2025.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2024–0328, 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 Water 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: Adrian Hanley, Engineering and Analysis Division, Office of Water (4303T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460–0001; telephone number: 202–564–1564; email address: *hanley.adrian@epa.gov.*

SUPPLEMENTARY INFORMATION: Table of Contents

I. Public Participation
II. General Information
III. Background
IV. Corrections or Amendments to the Text and Tables of 40 CFR part 136
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2024–0328, 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 the 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* for additional submission information; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments. Publicly available docket materials are available electronically in *https://www.regulations.gov* at the Water Docket in EPA Docket Center, EPA/DC, EPA West William J. Clinton Building, Room 3334, 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. Any copyright material can be viewed at the Reading Room, please contact the EPA Docket Center, Public Reading Room. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426. Fax: 202–566–9744. Email: *docket-customerservice@epa.gov.*

II. General Information

A. Does this action apply to me?

Entities potentially affected by the requirements of this action include:

Category	Examples of potentially affected entities
State, Territorial, and Indian Tribal Governments.	States authorized to administer the National Pollutant Discharge Elimination System permitting program; states, territories, and Tribes providing certification under CWA section 401; state, territorial, and Tribal-owned facilities that must conduct monitoring to comply with NPDES permits.
Industry	Facilities that must conduct monitoring to comply with NPDES permits; the environmental monitoring industry.
Municipalities	Publicly Owned Treatment Works or other municipality-owned facilities that must conduct monitoring to comply with NPDES permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists types of entities that the EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability language at 40 CFR 122.1 (NPDES purpose and scope), 40 CFR 136.1 (NPDES permits and CWA) and 40 CFR 403.1 (pretreatment standards purpose and applicability). If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

Periodically, the EPA updates the approved methods in 40 CFR part 136. This proposed rulemaking is the 24th update to 40 CFR part 136 since its inception in 1973, 22 Method Update Rules and two Routine Method Update Rules. In general, the changes in this action fall into six categories. The first category is withdrawal of the seven Aroclor parameters and associated methods. The second category is withdrawal of outdated methods that have been supplanted by already approved methods at 40 CFR part 136. The third category is a simplification of the sampling and preservation requirements for two volatile organic compound methods. The fourth category includes minor corrections in the text and tables in 40 CFR part 136. The EPA is proposing these revisions to keep current with technology advances, and to improve data quality and consistency for the regulated community. The fifth category is new EPA methods for new parameters that are being added to 40 CFR part 136. The sixth category is new methods published by a voluntary consensus standard body or vendor for new parameters. The following paragraphs provide details on the revisions. The first four categories are discussed in section IV Corrections or Amendments to the Text and Tables of 40 CFR part 136 of this preamble, the fifth and sixth categories are discussed in section V Incorporation by Reference of this preamble.

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

The EPA is proposing this regulation under the authorities of sections 301(a), 304(h), and 501(a) of the CWA; 33 U.S.C. 1251, 1311(a), 1314(h) and 1361(a). Section 301(a) of the CWA prohibits the discharge of any pollutant into navigable waters unless the discharge complies with, among other provisions, a NPDES permit issued under section 402 of the CWA. Section 304(h) of the CWA requires the EPA Administrator to ''. . .promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to [section 401 of the CWA] or permit application pursuant to [section 402 of the CWA].'' Section 501(a) of the CWA authorizes the EPA Administrator to ''. . . prescribe such regulations as are necessary to carry out this function under [the CWA].'' The EPA generally has codified its test procedure regulations (including analysis and sampling requirements) for CWA programs at 40 CFR part 136, though some requirements are codified in other parts (*e.g.,* 40 CFR Chapter I, Subchapters N and O).

III. Background

This preamble describes the abbreviations and acronyms used, the legal authority and reasons for the proposed rule, and a summary of the proposed changes and clarifications, and solicits comment from the public.

Abbreviations and Acronyms Used in the Preamble

AOF: Adsorbable Organic Fluorine
ASTM: ASTM International [1]
CFR: Code of Federal Regulations
CWA: Clean Water Act
EPA: The U.S. Environmental Protection Agency
GC/MS: Gas Chromatography/Mass Spectrometry
H_2O_2: Hydrogen Peroxide
ICP/AES: Inductively Coupled Plasma-Atomic Emission Spectroscopy
LC–MS/MS: Liquid Chromatography-Tandem Mass Spectrometry (also used as LC/MS/MS in some methods)
NPDES: National Pollutant Discharge Elimination System
NTTAA: National Technology Transfer and Advancement Act
PAA: Peracetic Acid
PCB: Polychlorinated Biphenyl
PFAS: Per- and Polyfluoroalkyl Substances
POTW: Publicly Owned Treatment Works
QC: Quality Control
TNI: The NELAC Institute
USGS: United States Geological Survey
VCSB: Voluntary Consensus Standards Body

NPDES permits must include conditions to ensure compliance with the technology-based and water quality-based requirements of the CWA, including in many cases, restrictions on the quantity of specific pollutants that can be discharged. Permittees must use EPA-approved analytical methods that are sensitive enough to detect and measure pollutants at or below permit limits or water quality criteria (CWA section 402(b)(2)(A)). Permits include measurement and reporting requirements for these specific pollutants; however, permittees often have a choice of which approved test procedure they will use when the EPA has approved more than one method for a specific pollutant.

The procedures for the analysis of pollutants required by CWA section 304(h) are a central element of the NPDES permit program. Examples of

[1] Formerly known as the American Society for Testing and Materials (ASTM).

where these EPA-approved analytical methods must be used include the following: (1) applications for NPDES permits, (2) sampling or other reports required under NPDES permits, (3) other requests for quantitative or qualitative effluent data under the NPDES regulations, (4) State CWA 401 certifications, and (5) sampling and analysis required under EPA's General Pretreatment Regulations for Existing and New Sources of Pollution, 40 CFR 136.1, 40 CFR 403.12(b)(5)(v), and 40 CFR 403.12(g)(3).

Periodically, the EPA promulgates updates to the approved methods in 40 CFR part 136 to improve data quality and consistency. The changes proposed in this action fall into the following categories. The first category is withdrawal of seven Aroclor mixtures and the associated approved methods for Aroclors from the list of parameters at Table Ic that have been replaced with a method for the PCB congeners and total PCBs at Table Ii that provides a more accurate and complete characterization of the PCB content of samples than Aroclor analyses (see section V.A of this preamble). The second category is withdrawal of outdated methods that includes single-analyte total metal colorimetric methods for twelve metal parameters, a Waters™ anion method, and EPA Method 1664A for the parameter ''oil and grease'' (see section IV.B of this preamble). The third category is simplifying sampling requirements for purgeable compounds by making the preservation requirement for acrolein and acrylonitrile consistent with the other pollutants analyzed by volatile organic compound methods (see section IV.C of this preamble). The fourth category is minor corrections to the text and tables at 40 CFR part 136 (see section IV.D of this preamble). The fifth category is new EPA methods for new parameters not previously listed at 40 CFR part 136 that will be added by incorporation by reference: per- and polyfluoroalkyl substances (PFAS) by EPA Method 1633A to a new Table Ij, adsorbable organic fluorine (AOF) by EPA Method 1621 to Table Ic, and polychlorinated biphenyl (PCB) congeners by EPA Method 1628 to a new Table Ii (see section V.A of this preamble). The EPA has finalized these three EPA methods and has posted these methods, along with their validation study reports, on EPA's CWA Methods website (*https://www.epa.gov/cwa-methods*). The sixth category is new methods published by the voluntary consensus standard bodies (VCSBs) or vendors for new parameters not previously listed at 40 CFR part 136 that will be added by incorporation by reference: PFAS analytes by ASTM D8421–24 to Table Ij; peracetic acid (PAA) by Standard Method ''4500–PAA Peracetic Acid (Residual),'' and hydrogen peroxide (H_2O_2) by Standard Method ''4500–H_2O_2 Hydrogen Peroxide (Residual)'' to Table Ib (see section V.B of this preamble). Finally, as a consequence of adding the two new tables for the PCB congeners and PFAS, the format of the numbers for the existing Tables IA through IH are being revised to be called out as Tables Ia through Ih. The use of a lowercase letter in the table identifier is necessary to avoid confusion between the new Table Ii of PCB congeners and the existing Table II with the required containers, preservation techniques, and holding times (see section V.A of this preamble).

IV. Corrections or Amendments to the Text and Tables of 40 CFR Part 136

A. Withdrawal of the Aroclor Parameters and the Associated Methods

The EPA proposes to withdraw the seven Aroclor parameters listed as PCB–1016, PCB–1221, PCB–1232, PCB–1242, PCB–1248, PCB–1254, and PCB–1260 and their associated methods from Table Ic, Parameters 88–94. Removing these parameters will result in the renumbering of all of the subsequent parameters in that table. This will also result in deletion of footnote 8, and the renumbering of footnotes 9 through 16. All of the methods listed for these parameters are listed elsewhere for other parameters, so none of them will be completely removed from 40 CFR part 136.3. The ''PCBs'' class of compounds is made up of 209 structurally related but distinct chemicals often called ''congeners.'' The seven Aroclor parameters are commercial PCB mixtures and were first included in the EPA's 1976 Priority Pollutant List (Appendix A to Part 423, Title 40). These seven PCB mixtures were the only ones for which the EPA had valid methods at that time. However, none of these Aroclor mixtures include all the PCB congeners that may be present in an environmental sample. The EPA developed the original Aroclor methods in the 1970s, when analysis of individual PCB congeners was impractical with the existing affordable analytical technology and in the absence of automated laboratory information management systems. During the multi-laboratory study of Method 608 in the late 1970s, roughly 20% of the Aroclor data were rejected due to poor accuracy, and false negatives (non-detects) were an issue even with samples that were spiked with fresh standards.[2]

When used as a surrogate for PCBs, the results from the approved Aroclor methods can create false confidence that PCBs are not present. Given that the manufacturing and use of PCBs have been banned in the U.S. since 1979, most PCBs in the environment have been subjected to extensive changes in composition and concentration through processes that are collectively referred to as ''weathering.'' Moreover, there are other relevant sources of PCBs to the environment beyond the seven Aroclor parameters that are not accounted for through Aroclor analyses. Aroclor methods were the best available technology when they were validated in 1978, but now there are much more accurate methods. Thus, the EPA is proposing to replace the Aroclor analysis with EPA Method 1628, which detects the 209 PCB congeners directly, either as individual congeners or groups of co-eluting congeners. As demonstrated by the EPA's multi-laboratory study,[3] EPA Method 1628 can be widely implemented because it uses laboratory equipment that is readily available and is already employed by many full-service laboratories.

Withdrawal of the Aroclor parameters and associated methods will not have any immediate impact on current NPDES permits because permits that have been issued by the permitting authority can continue until they expire. 40 CFR 122.21(e)(3)(ii) states: ''(ii) When there is no analytical method that has been approved under 40 CFR part 136, required under 40 CFR chapter I, subchapter N or O, and is not otherwise required by the Director, the applicant may use any suitable method but shall provide a description of the method. When selecting a suitable method, other factors such as a method's precision, accuracy, or resolution, may be considered when assessing the performance of the method.'' EPA anticipates renewed permits will switch to the approved PCB congener method. Given that most permits are renewed every 5 years or less, promulgation of this part of this proposed rule would result in a multi-year phase out of Aroclor analysis.

B. Withdrawal of Outdated Methods

The EPA proposes to withdraw approval of outdated colorimetric

[2] EPA document EPA–600/4–84–061, ''EPA Method Study 18 Method 608—Organochlorine Pesticides and PCBs.'' June 1984.

[3] EPA document EPA 820–R–21–003, ''Report on the Multi-laboratory Validation of Clean Water Act Method 1628 for PCB Congeners.'' April 2021.

methods for 12 individual metals and one inorganic anions alternate test procedure that the sponsoring organization no longer supports or makes available to the public. The removal of these methods and their associated footnotes will result in renumbering of the following footnotes at the end of Table Ib.

1. The EPA proposes to withdraw 12 single-metal colorimetric methodology types that measure a total metal concentration (*e.g.,* ''Aluminum—Total'') from 40 CFR 136.3, Table Ib. There are multiple inductively coupled plasma (ICP) and graphite furnace methods that are more sensitive and provide more accurate results in challenging matrices that are already listed in Table Ib. These ICP and graphite furnace methods are also relatively inexpensive and easily automated, particularly when analyzing for one parameter (as is done for the colorimetric methods that the EPA is proposing to withdraw). The suggestion to withdraw these methods initially came from The NELAC Institute (TNI), which accredits a large portion of the environmental laboratories in the U.S. TNI is unaware of any laboratory that is currently accredited for these outdated colorimetric methods. If the EPA receives compelling reason to not withdraw any of these methods, the EPA will consider keeping some or all of these methods in 40 CFR part 136. Otherwise, the EPA proposes to withdraw the methods in the rows where ''Colorimetric'' is the listed methodology for the following total metals, listed in order of the parameter number in Table Ib: 3. Aluminum—Total, 6. Arsenic—Total, 8. Beryllium—Total, 10. Boron—Total, 12. Cadmium—Total, 19. Chromium—Total, 22. Copper—Total, 30. Iron—Total, 32. Lead—Total, 34. Manganese—Total, 74. Vanadium—Total, and 75. Zinc—Total. In addition, footnotes pertaining to only these withdrawals will be removed and the remaining footnotes renumbered sequentially. The relevant methods that will be withdrawn are listed here by organization. Standard Methods: 3500-Al B–2020, 3500-As B–2020, 4500–B B–2011, 3500-Cd D–1990, 3500-Cr B–2020, 3500-Cu B and C–2020, 3500 Fe B–2011, 3500-Pb B–2020, 3500-Mn B–2020, 3500–V B–2011, 3500-Zn B–2020, and Footnote 61 that references an aluminon colorimetric method in Standard Methods 19th Edition. ASTM: D2972–15 (A), D1068–15 (C). USGS: Methods I–3060–85 and I–3112–85. Hach: Footnote 19 that references Method 8506, Bicinchoninate Method for Copper, Hach Handbook of Water Analysis, 1979; Footnote 22 that references Method 8008, 1,10-Phenanthroline Method using FerroVer Iron Reagent for Water, 1980; Footnote 23 that references Method 8034, Periodate Oxidation Method for Manganese, Hach Handbook of Wastewater Analysis, 1979; and Footnote 33 that references Method 8009, Zincon Method for Zinc, Hach Handbook of Water Analysis, 1979. AOAC International: Footnote 3 that references Method 920.203, the persulfate oxidation procedure from the Official Methods of Analysis of the Association of Official Analytical Chemists, Methods Manual, Sixteenth Edition, 4th Revision, 1998.

2. The EPA also proposes to withdraw from Table Ib the Waters™ Corporation alternate test procedure: ''Method D6508 Rev.2, Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte.'' The Waters™ Corporation no longer supports this method and no longer provides copies of this method to the public. Waters™ developed their alternative test procedure to incorporate additional analysis techniques into an older ASTM standard. The method modifications developed by Waters™ were incorporated into later versions of the ASTM standard, including D6508–15, which is the currently approved method for the same anions: bromide, chloride, fluoride, nitrate, nitrate-nitrite, nitrite, orthophosphate, and sulfate (86 FR 27226, May 19, 2021). Both the Waters™ and ASTM methods are capillary ion electrophoresis methods that provide a simultaneous separation and determination of several inorganic anions and identifies all anions present in the sample by indirect UV detection. The EPA proposes to remove the eight occurrences of Method D6508 Rev. 2 from Table Ib. They are found in parameters: 11. Bromide, 16. Chloride, 25. Fluoride-Total, 38 Nitrate (as N), 39. Nitrate-nitrite (as N), 40. Nitrite (as N), 44. Ortho-phosphate (as P), and 65. Sulfate (as SO_4).

3. The EPA proposes to withdraw EPA Method 1664, Revision A: N-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated N-Hexane Extractable Material (SGTHEM; Non-polar Material) by Extraction and Gravimetry, approved at 64 FR 26315, May 14, 1999, from Table Ib, parameter 41. A later revision of Method 1664, (1664 Rev. B), was approved by the EPA in a 2012 rulemaking, 77 FR 29758, May 18, 2012. That 2012 rule strongly recommended laboratories and permitting authorities replace Method 1664, Rev. A with Method 1664, Rev. B. The 2012 rule also said that the EPA would revisit withdrawing Method 1664, Rev. A in a future rulemaking (77 FR 29758, May 18, 2012). Laboratories and regulatory entities have had more than 12 years to make this adjustment, so the EPA is proposing to withdraw Method, 1664, Rev. A from Table Ib, for parameter 41. Oil and Grease—Total recoverable.

C. Simplify the Sampling and Preservation Requirements for Two Purgeable Organic Compounds (Often Referred to as Volatile Organic Compounds)

The EPA proposes to change the sampling and preservation requirements for acrolein and acrylonitrile to match those of the other purgeable halocarbons and purgeable aromatic hydrocarbons in Table II under the section for parameters in Table Ic. The EPA proposes to change the preservation pH requirement from pH 4–5 to a pH of 2, and to use hydrochloric acid to adjust the sample pH, to align with the approved practice for other purgeable organic compounds. The Environmental Monitoring Coalition provided the EPA with the results from a study using multiple wastewater types that demonstrated that the analysis of acrolein and acrylonitrile is not adversely affected by the lower pH preservation. That Environmental Monitoring Coalition study report: ''Evaluating Preservation Requirements for Acrolein and Acrylonitrile in Aqueous Matrices,'' is provided in the docket. Thus, the EPA is proposing these changes to make the sampling, analysis, and data reporting more efficient for purgeable organic compound methods.

D. Minor Corrections and Amendments to the Texts and Tables of 40 CFR Part 136

Stakeholders have identified several minor errors in Tables Ib, Id, and II. The EPA proposes to correct the following entries in those tables.

1. The EPA proposes to remove the row for the methodology ''Amperometric direct (low level)'' in Table Ib, parameter 17A, Chlorine-Free Available, because the only method listed in that row, Standard Method 4500 Cl E, measures Total Residual Chlorine (*e.g.,* parameter 17), not free chlorine. The method will remain in the corresponding row for Residual Chlorine parameter 17, where the parameter matches the method.

2. The EPA proposes to amend Table Ib parameter 24 by adding 4500–CN P–2021 and D7511(17) to allow use of any method approved for measurement of Total Cyanide in both the untreated and

treated fractions of a sample for determination of available cyanide by cyanide amenable to chlorination (CATC), provided the treatment steps in the two currently approved amenable cyanide methods, 4500–CN G–2016 and ASTM D2036–09(15)(B), are followed.

3. The EPA proposes to add EPA Method 625.1 as an approved method for the parameter Parathion ethyl, parameter 53 in Table Id. The use of EPA Method 625.1 was incorrectly omitted from Table Id for this parameter the last time that Table Id was updated (82 FR 40836, August 28, 2017) because the method lists this analyte as ''Parathion,'' rather than Parathion ethyl. EPA Method 625.1 measures aqueous samples by extracting them with methylene chloride at pH 11—13 and again at a pH less than 2 using a separatory funnel or continuous liquid/liquid extractor. Then the extract is concentrated and analyzed by GC/MS.

4. The EPA proposes to apply footnote 9 to the entry for EPA Method 1613B in Table Ic for parameter 96, 2,3,7,8-Tetrachloro-dibenzo-*p*-dioxin (formerly listed a parameter 103). This footnote (formerly listed as footnote 10) was to be added to all 17 dioxin and furan congeners in a previous rule (88 FR 10739, February 21, 2023) but was inadvertently missed for this parameter.

5. The EPA proposes to add sodium thiosulfate, $Na_2S_2O_3$, to the preservation column for parameter 4, Ammonia, under Table Ib in Table II, and apply Footnote 5 to that entry to address the fact that residual chlorine in samples will react with ammonia to form chloramines, which are an interference with ammonia analyses. The EPA also is adding the following text to the end of Footnote 5, ''Section A.2 of Standard Method 4500–NH3 discusses the need for dechlorination of samples for ammonia analysis.''

6. The EPA proposes to edit Footnote 17 to Table II under the section for parameters in Table Ib, as applied to parameter 35 for ''Mercury (CVAFS)'' to include mention of EPA Method 245.7 along with EPA Method 1631 in the footnote. Both methods employ the same cold vapor atomic fluorescence spectroscopy (CVAFS) determinative technique and including EPA Method 245.7 in the footnote will help clarify that the 90-day holding time applies to EPA Method 245.7 as well as EPA Method 1631. Currently, Method 245.7 is not specifically mentioned in Table II, which was an oversight.

7. The EPA proposes to specify in Table II that sodium thiosulfate is to be added to samples to remove oxidants (*e.g.,* chlorine) for the Table 1B parameter 48 (Phenols) and the Table 1C parameters 107 to 111 (Alkylated phenols). The EPA also proposes to restore footnote 5 in Table II for Table 1C parameters 23, 30, 44, 49, 53, 77, 80, 81, 91, 93, and 105 (Phenols), and to add Footnote 5 for Table 1C parameters 112 (Adsorbable Organic Halides) and 113 (Chlorinated Phenolics), and to clarify that the addition of sodium thiosulfate is only necessary when oxidants are present (*e.g.,* chlorine).

8. The EPA proposes to add a new footnote to Table II under Table Ib and apply it to the entry for parameter 50, Phosphorus—Total. The new Footnote 25 addresses the fact that many laboratories determine total phosphorus using EPA Method 200.7, an ICP/AES procedure for metals that is also approved for phosphorus. However, as laboratories often note, the acid specified in Table II to preserve metals samples is nitric acid, where Table II calls out sulfuric acid for phosphorous. In both cases the specified pH is a value less than or equal to 2. In addition, while Table II allows acidified samples to held for 6 months, it only allows phosphorus samples to be held for 28 days. The new Footnote 25 reads: ''When EPA Method 200.7 or another approved ICP/AES method is used to determine total phosphorus, sulfuric acid may be used to preserve the sample to pH ≤ 2, or the acid-preserved sample for metals may be used for analysis, and the holding time for total phosphorus may be extended to 6 months.''

V. Incorporation by Reference

Currently, hundreds of methods and alternate test procedures are incorporated by reference within 40 CFR part 136. In most cases, 40 CFR part 136 contains multiple approved methods for a single parameter (or pollutant) and regulated entities often have a choice in selecting a method. The proposed rule contains VCSB methods that are incorporated by reference (see section V.B of this preamble). The proposed VCSB methods are consistent with the requirements of the National Technology Transfer and Advancement Act (NTTAA), under which Federal agencies should use technical standards developed or adopted by the VCSBs if compliance would not be inconsistent with applicable law or otherwise impracticable (see section VI of this preamble). The proposed copyrighted VCSB methods are available on their respective websites (standardmethods.org and astm.org) to everyone at a cost determined by the VCSB, generally from $60 to $80. Both organizations also offer memberships or subscriptions that allow unlimited access to their methods. The cost of obtaining these methods is not a significant financial burden for a discharger or environmental laboratory, making the methods reasonably available.

This proposal includes EPA Method 1621, EPA Method 1628, and EPA Method 1633A (see section V.A of this preamble) and ASTM D8421–24, Standard Method ''4500–PAA Peracetic Acid (Residual)'', and Standard Method ''4500–H2O2 Hydrogen Peroxide (Residual)'' for four parameter types (see section V.B of this preamble) which the EPA proposes to incorporate by reference. The EPA methods and the vendor methods are available free of charge on their respective websites, therefore the EPA methods and vendor methods incorporated by reference are reasonably available.

Other standards appear in the amendatory text of this document and have already been approved for the locations in which they appear.

A. Changes to 40 CFR 136.3 To Include Three New EPA Methods and Their Associated Parameters

The EPA proposes to add three new EPA methods and their associated parameters to 40 CFR 136.3: EPA Method 1621: Determination of Adsorbable Organic Fluorine (AOF) in Aqueous Matrices by Combustion Ion Chromatography (CIC), EPA Method 1628: Polychlorinated Biphenyl (PCB) Congeners in Water, Soil, Sediment, Biosolids, and Tissue by Low-resolution GC/MS using Selected Ion Monitoring, and EPA Method 1633A: Analysis of Per- and Polyfluoroalkyl Substances (PFAS) in Aqueous, Solid, Biosolids, and Tissue Samples by LC–MS/MS. All three of these methods have multi-laboratory validation studies that demonstrate they perform well in a wide variety of wastewater types at multiple laboratories. These methods include performance (or quality control) criteria that the EPA generated by statistically analyzing the data from the multi-laboratory validation studies. The multi-laboratory validation study reports and methods are available to the public on the EPA's Clean Water Act Analytical Methods website at *https://www.epa.gov/cwa-methods,* and in the docket to this proposed rulemaking.

Adding these methods and parameters to 40 CFR part 136 does not require the permitting authority to require monitoring for those parameters, but it informs the permitting authority and discharger that there is an available method that has been validated and tested. Once these methods are finalized in 40 CFR part 136, then use of the approved test procedure is required if

any of these parameters are added to a NPDES permit. The EPA proposes to add the parameter ''Adsorbable Organic Fluorine,'' (AOF) to Table Ic with the approved test procedure EPA Method 1621. EPA Method 1621 determines adsorbable organic fluorine by passing an aqueous sample through two granular activated carbon columns. The columns are rinsed with sodium nitrate to remove inorganic fluoride, combusted at ≥1000 °C in an oxygen or oxygen/argon stream, and the gaseous hydrogen fluoride is absorbed into reagent water. The fluoride is separated by ion chromatography (IC), identified by comparing sample fluoride retention time to retention times for calibration standards acquired under identical Ic conditions, and then quantified using the external standard technique.

The EPA proposes to redesignate all tables in 136.3 with a lower case letter, for example Table IA would be ''Table Ia—List of Approved Biological Methods for Wastewater and Sewage Sludge.'' This redesignation of the table titles is needed to avoid confusion with the currently existing Table II (Roman numeral two) and the new table for PCBs in order to distinguish between Roman numeral one followed by the letter ''I'' and Roman numeral two. Then Tables Ii and Ij will be added, as discussed below. The number format for Table II—Required Containers, Preservation Techniques, and Holding Times will remain unchanged.

The EPA proposes to add the 209 Polychlorinated Biphenyl (PCB) Congeners and Total PCBs as new parameters in a new Table Ii with the approved test procedure EPA Method 1628. Method 1628 detects all PCB 209 congeners, which are all the compounds that make up the class of chemicals called ''PCBs.'' The new parameter called ''Total PCBs'' will be the summation of all the detected PCB congeners in the sample as determined by Method 1628. The summation will use zero (0) for the contribution of the congeners that are not detected. Otherwise, every method blank would have a non-zero result, even when no congeners are detected, affecting assessments of the sample results relative to the method blank. There is no method detection limit (MDL) for Total PCBs because it is the sum of the results for many individual parameters. Method blanks and samples with no detects are reported as ''ND'' for non-detect, or a similarly appropriate non-numeric value. Method 1628 analyzes samples by spiking them with isotope dilution standards, extracting the PCBs using separatory funnel extraction or solid-phase extraction, cleaning the extracts with a Florisil® column, and analyzing the sample extracts using GC/MS with selected ion monitoring. Because the full names of the PCB congeners are long and contain many numbers indicating the positions of the chlorine substituents (*e.g.,* 2,3,3′,4,4′,5-Hexachlorobiphenyl), they are often expressed as a ''congener number'' in the format ''PCB–XYZ,'' where ''XYZ is a number between 1 and 209. The EPA has included the congener numbers in Table Ii to facilitate consistency in reporting of the results for these new parameters.

The EPA proposes to add the 40 target PFAS analytes in Method 1633A as new parameters in a new Table Ij, with the approved test procedure EPA Method 1633A. Method 1633A analyzes samples by spiking them with isotope dilution standards, subjecting them to solid-phase extraction and activated carbon cleanup, and analyzing the sample extracts using liquid chromatography-tandem mass spectrometry (LC–MS/MS).

The EPA proposes to add these new parameters to the relevant section of Table II—Required Containers, Preservation Techniques, and Holding Times. The specifications for the containers, preservation techniques, and holding times for these parameters are the same as the specifications provided in the method.

B. Changes to 40 CFR 136.3 To Include New Parameters and Methods Published by VCSBs and Vendors

The EPA solicited VCSBs and relevant vendors to submit methods, along with study reports and validation data, for the following parameters: the PFAS parameters listed in Method 1633A, peracetic acid, and hydrogen peroxide. The VCSBs or vendors submitted data that demonstrate that their methods can be used at multiple laboratories and can reliably detect and quantify the parameter in a wide variety of wastewater types (as the EPA does with its own CWA methods). The methods and multi-laboratory study reports for each of the following methods are in the docket for this rulemaking. The EPA proposes to add the following parameters and methods to 40 CFR part 136.

The EPA also proposes to add these new parameters to the relevant section of Table II—Required Containers, Preservation Techniques, and Holding Times. The specifications for the containers, preservation techniques, and holding times for peracetic acid, and hydrogen peroxide are the same as the specifications provided in the methods. The preservation and holding time specifications for the PFAS parameters parallel those from EPA Method 1633A.

1. ''ASTM D8421–24 Standard Test Method for Determination of Per- and Polyfluoroalkyl Substances (PFAS) in Aqueous Matrices by Co-solvation followed by Liquid Chromatography Tandem Mass Spectrometry (LC/MS/MS),'' as an approved test procedure for the 40 PFAS analytes being added as new parameters in Table Ij. ASTM D8421–24 analyzes aqueous samples by adding labeled surrogates to a 5-mL sample in the original container, adding 5 mL of methanol, filtering the sample, adjusting the pH and injecting a small aliquot of the extract into an LC–MS/MS instrument.

2. The EPA proposes to add the parameter ''Peracetic acid (PAA)'' to Table Ib and approve Standard Method ''4500–PAA Peracetic Acid (Residual).'' This method uses a simple handheld instrument that uses N,N-diethyl–p-phenylenediamine (DPD) chemical indicator (for PAA) followed by colorimetric detection. It is similar to the colorimetric methods used for residual chlorine. This new parameter will provide POTWs and other wastewater treatment permittees that utilize peracetic acid as an alternative to chlorine-based disinfectants with an approved method to monitor their discharges.

3. The EPA also proposes to add the parameter ''Hydrogen Peroxide (H_2O_2),'' to Table Ib and approve Standard Method ''4500–H_2O_2 Hydrogen Peroxide (Residual).'' This method uses a simple handheld instrument that uses ferric thiocyanate chemical indicator (for H_2O_2) followed by colorimetric detection. It is similar to the colorimetric methods used for residual chlorine. Hydrogen peroxide is a by-product of the use of Peracetic acid as an alternative to chlorine-based disinfectants and in conjunction with the addition of the new parameter ''Peracetic acid (PAA),'' Standard Method ''4500–H_2O_2 Hydrogen Peroxide (Residual) will provide POTWs and other wastewater treatment permittees that utilize peracetic acid with approved methods to monitor their discharges.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review 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

This action does not impose an information collection burden under the Paperwork Reduction Act. This rule does not impose any information collection, reporting, or recordkeeping requirements. This proposal would merely add or revise CWA test procedures.

C. Regulatory Flexibility Act

I certify that this action would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. This action would not impose any requirements on small entities. This action would approve new and revised versions of CWA testing procedures. Generally, these changes improve data quality. In general, the EPA expects the proposed revisions would lead to few direct costs. Adding these parameters and methods to 40 CFR part 136 does not require the permitting authority to require monitoring that parameter, but it informs the permitting authority and discharger that there is an available method that has been validated and tested in a wide variety of wastewater types. If a permittee is already monitoring for one of more of the parameters, then the permittee may need to change methods. This would not be a significant change in cost, given that the permittee is already paying a laboratory to analyze for the parameter(s). The EPA proposes methods that would be incorporated by reference. If a permittee elected to use these methods, they could incur a small cost associated with obtaining these methods from the listed sources. See section IV of this preamble.

D. Unfunded Mandates Reform Act

This action does not contain an unfunded mandate as described in the Unfunded Mandates Reform Act, 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 proposed rule does not have federalism implications. It would 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 proposed rule does not have tribal implications as specified in Executive Order 13175. This rule would merely approve new and revised versions of test procedures. The EPA does not expect the proposal would lead to any costs to any tribal governments, and if incurred, the EPA projects they would be minimal. 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 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. 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, the EPA's policy on Children's Health also does not apply.

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

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

I. National Technology Transfer and Advancement Act of 1995

This action involves technical standards. The EPA proposes to approve the use of technical standards developed and recommended by the Standard Methods Committee and ASTM International for use in compliance monitoring where the EPA determined that those standards meet the needs of CWA programs. As described above, this proposal is consistent with the NTTAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

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 has no effect on communities because this action will approve new CWA testing procedures. These changes would provide increased flexibility for the regulated community in meeting monitoring requirements while improving data quality. Adding new parameters to 40 CFR part 136 does not require the parameters to be monitored. In addition, this update to the CWA methods will incorporate technological advances in analytical technology. Although this action does not concern human health or environmental conditions, the EPA identifies and addresses environmental justice concerns 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.

List of Subjects in 40 CFR Part 136

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Test procedures, Water pollution control.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR part 136 as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

■ 1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307 and 501(a), Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

■ 2. Amend § 136.3 by:
■ a. Redesignating tables IA through IH as tables Ia through Ih, respectively;
■ b. In paragraph (a):
■ i. Revising the introductory text;
■ ii. Revising newly redesignated tables Ib and Ic;
■ iii. In newly redesignated table Id, revising the third column heading and the entry for ''53. Parathion ethyl'';
■ iv. Adding in alphabetical order tables Ii and Ij; and
■ c. In paragraph (b):
■ i. Revising the introductory text;
■ ii. Redesignating paragraphs (b)(8)(xi) through (xvi) as paragraphs (b)(8)(xiv) through (xix) and adding new paragraphs (b)(8)(xi) through (xiii);
■ iii. Revising and republishing paragraph (b)(10);

■ iv. Removing paragraph (b)(13)(i)(A), and redesignating paragraphs (b)(13)(i)(B) through (X) as paragraphs (b)(13)(i)(A) through (W);
■ v. Adding paragraph (b)(15)(lxxi);
■ vi. Removing paragraphs (b)(20)(ii) through (v), and redesignating paragraphs (b)(20)(vi) through (x) as paragraphs (b)(ii) through (vi);
■ vii. Revising paragraph (b)(38)(i); and
■ viii. Removing paragraph (b)(41).
■ d. In paragraph (e), table II:
■ i. Redesignating entries ''Table IA'' through ''Table IH'' as ''Table Ia'' ''through Table Ih'', respectively;
■ ii. Revising the entry for ''4. Ammonia'' under Table Ib-Inorganic Tests;
■ iii. Revising entries for ''48. Phenols'' and ''50. Phosphorus, total'', and adding entries for ''77. Hydrogen Peroxide'' and ''78. Peracetic Acid'' under Table Ib—Metals;
■ iv. Revising the table entitled ''Table Ic-Organic Tests'';
■ v. Adding in alphabetical order entries for ''Table Ii—Polychlorinated Biphenyl Congener Tests'' and ''Table Ij—Per- and Polyfluorinated Alkyl Substances Tests'';
■ vi. Revising footnotes 5 and 17 and
■ vii. Adding footnotes 25 through 29.

The revisions and additions read as follows:

§ 136.3 Identification of test procedures

(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables Ia, Ib, Ic, Id, Ie, If, Ig, Ih, Ii, and Ij of this section. The methods listed in Tables Ia, Ib, Ic, Id, Ie, If, Ig, Ih, Ii, and Ij are incorporated by reference, see paragraph (b) of this section, with the exception of EPA Methods 200.7, 601–613, 624.1, 625.1, 1613, 1624, and 1625. The full texts of Methods 601–613, 624.1, 625.1, 1613, 1624, and 1625 are printed in appendix A of this part, and the full text of Method 200.7 is printed in appendix C of this part. The full text for determining the method detection limit when using the test procedures is given in appendix B of this part. In the event of a conflict between the reporting requirements of 40 CFR parts 122 and 125 and any reporting requirements associated with the methods listed in these tables, the provisions of 40 CFR parts 122 and 125 are controlling and will determine a permittee's reporting requirements. The full texts of the referenced test procedures are incorporated by reference into Tables Ia, Ib, Ic, Id, Ie, If, Ig, Ih, Ii, and Ij. The year after the method number indicates the latest editorial change of the method. The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables Ia, Ib, Ic, Id, Ie, If, Ig, Ih, Ii, and Ij, or by any alternate test procedure which has been approved by the Administrator under the provisions of paragraph (d) of this section and §§ 136.4 and 136.5. Under certain circumstances (paragraph (c) of this section, in § 136.5(a) through (d) or 40 CFR 401.13) other additional or alternate test procedures may be used.

* * * * *

TABLE Ib—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
1. Acidity, as $CaCO_3$, mg/L	Electrometric endpoint or phenolphthalein endpoint		2310 B-2020	D1067-16	I-1020-85 [2]
2. Alkalinity, as $CaCO_3$, mg/L	Electrometric or Colorimetric titration to pH 4.5, Manual		2320 B-2021	D1067-16	973.43 [3], I-1030-85 [2]
	Automatic	310.2 (Rev. 1974)[1]			I-2030-85 [2]
3. Aluminum—Total,[4] mg/L	Digestion[4], followed by any of the following:				
	AA direct aspiration [32]		3111 D-2019 or 3111 E-2019		I-3051-85 [2]
	AA furnace		3113 B-2020		
	STGFAA	200.9, Rev. 2.2 (1994)			
	ICP/AES [32]	200.5, Rev 4.2 (2003) [62], 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4472-97 [75]
	Direct Current Plasma (DCP) [32]			D4190-15	See footnote [30]
4. Ammonia (as N), mg/L	Manual distillation [6] or gas diffusion (pH > 11), followed by any of the following:	350.1, Rev. 2.0 (1993)	4500-NH_3 B-2021		973.49 [3]
	Nesslerization			D1426-15 (A)	973.49 [3], I-3520-85 [2]
	Titration		4500-NH_3 C-2021		
	Electrode		4500-NH_3 D-2021 or E-2021	D1426-15 (B)	
	Manual phenate, salicylate, or other substituted phenols in Berthelot reaction-based methods		4500-NH_3 F-2021		See footnote [55]
	Automated phenate, salicylate, or other substituted phenols in Berthelot reaction-based methods	350.1 [27], Rev. 2.0 (1993)	4500-NH_3 G-2021 4500-NH_3 H-2021		I-4523-85 [2], I-2522-90 [74]
	Automated electrode				See footnote.[7]
	Ion Chromatography			D6919-17	

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	Automated gas diffusion, followed by conductivity cell analysis				Timberline Ammonia-001 [68]
	Automated gas diffusion followed by fluorescence detector analysis				FIAlab100 [76]
5. Antimony—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration [32]		3111 B-2019		
	AA furnace		3113 B-2020		
	STGFAA	200.9, Rev. 2.2 (1994)			
	ICP/AES [32]	200.5, Rev 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4472-97 [75]
6. Arsenic—Total,[4] mg/L	Digestion [4], followed by any of the following:	206.5 (Issued 1978) [1]			
	AA gaseous hydride		3114 B-2020 or 3114 C-2020	D2972-15 (B)	I-3062-85 [2]
	AA furnace		3113 B-2020	D2972-15 (C)	I-4063-98 [45]
	STGFAA	200.9, Rev. 2.2 (1994)			
	ICP/AES [32]	200.5, Rev 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4020-05 [64]
7. Barium—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration [32]		3111 D-2019		I-3084-85 [2]
	AA furnace		3113 B-2020	D4382-18	
	ICP/AES [32]	200.5, Rev 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020		I-4471-97 [46]

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4472-97 [75]
	DCP [32]				See footnote [30]
8. Beryllium—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 D-2019 or 3111 E-2019	D3645-15 (A)	I-3095-85 [2]
	AA furnace		3113 B-2020	D3645-15 (B)	
	STGFAA	200.9, Rev. 2.2 (1994)			
	ICP/AES	200.5, Rev 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4472-97 [75]
	DCP			D4190-15	See footnote [30]
9. Biochemical oxygen demand (BOD_5), mg/L	Dissolved Oxygen Depletion		5210 B-2016 [79]		973.44 [3], p. 17 [9], I-1578-78 [8], See footnotes [10, 57]
10. Boron—Total,[33] mg/L	ICP/AES	200.5, Rev 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3]
	DCP			D4190-15	See footnote [30]
11. Bromide, mg/L	Electrode			D1246-16	I-1125-85 [2]
	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997)	4110 B-2020, C-2020 or D-2020	D4327-17	993.30 [3], I-2057-85 [73]
	CIE/UV		4140 B-2020	D6508-15	
12. Cadmium—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration [32]		3111 B-2019 or 3111 C-2019	D3557-17 (A or B)	974.27 [3], p. 37 [9], I-3135-85 [2] or I-3136-85 [2]
	AA furnace		3113 B-2020	D3557-17 (D)	I-4138-89 [47]

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	STGFAA	200.9, Rev. 2.2 (1994)			
	ICP/AES [32]	200.5, Rev 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	I-1472-85 [2] or I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4472-97 [75]
	DCP [32]			D4190-15	See footnote [30]
	Voltammetry [11]			D3557-17 (C)	
13. Calcium—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B-2019 or 3111 D-2019	D511-14 (B)	I-3152-85 [2]
	ICP/AES	200.5, Rev 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020		I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3]
	DCP				See footnote [30]
	Titrimetric (EDTA)		3500-Ca B-2020	D511-14 (A)	
	Ion Chromatography			D6919-17	
14. Carbonaceous biochemical oxygen demand ($CBOD_5$), mg/L[12]	Dissolved Oxygen Depletion with nitrification inhibitor		5210 B-2016 [79]		See footnotes .[31, 57]
15. Chemical oxygen demand (COD), mg/L	Titrimetric	410.3 (Rev. 1978) [1]	5220 B-2011 or C-2011	D1252-06(12) (A)	973.46 [3], p. 17 [9], I-3560-85[2]
	Spectrophotometric, manual or automatic	410.4, Rev. 2.0 (1993)	5220 D-2011	D1252-06(12) (B)	See footnotes [13, 14, 77], I-3561-85 [2]
16. Chloride, mg/L	Titrimetric: (silver nitrate)		4500-Cl^- B-2021	D512-12 (B)	I-1183-85 [2]
	(Mercuric nitrate)		4500-Cl^- C-2021	D512-12 (A)	973.51 [3], I-1184-85 [2]
	Colorimetric: manual				I-1187-85 [2]
	Automated (ferricyanide)		4500-Cl^- E-2021		I-2187-85 [2]

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	Potentiometric Titration		4500-Cl^- D-2021		
	Ion Selective Electrode			D512-12 (C)	
	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997)	4110 B-2020 or 4110 C-2020	D4327-17	993.30 [3], I-2057-90 [47]
	CIE/UV		4140 B-2020	D6508-15	
17. Chlorine-Total residual, mg/L	Amperometric direct		4500-Cl D-2011	D1253-14	
	Amperometric direct (low level)		4500-Cl E-2011		
	Iodometric direct		4500-Cl B-2011		
	Back titration ether end-point [15]		4500-Cl C-2011		
	DPD-FAS		4500-Cl F-2011		
	Spectrophotometric, DPD		4500-Cl G-2011		
	Electrode				See footnote.[16]
17A. Chlorine-Free Available, mg/L	Amperometric direct		4500-Cl D-2011	D1253-14	
	DPD-FAS		4500-Cl F-2011		
	Spectrophotometric, DPD		4500-Cl G-2011		
18. Chromium VI dissolved, mg/L	0.45-micron filtration followed by any of the following:				
	AA chelation-extraction		3111 C-2019		I-1232-85 [2]
	Ion Chromatography	218.6, Rev. 3.3 (1994)	3500-Cr C-2020	D5257-17	993.23 [3]
	Colorimetric (diphenyl-carbazide)		3500-Cr B-2020	D1687-17 (A)	I-1230-85 [2]
19. Chromium—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration [32]		3111 B-2019	D1687-17 (B)	974.27 [3], I-3236-85 [2]
	AA chelation-extraction		3111 C-2019		
	AA furnace		3113 B-2020	D1687-17 (C)	I-3233-93 [42]
	STGFAA	200.9, Rev. 2.2 (1994)			

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	ICP/AES [32]	200.5, Rev 4.2 (2003) [62], 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4020-05 [64] I-4472-97 [75]
	DCP [32]			D4190-15	See footnote [30]
20. Cobalt—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B-2019 or 3111 C-2019	D3558-15 (A or B)	p. 37 [9], I-3239-85 [2]
	AA furnace		3113 B-2020	D3558-15 (C)	I-4243-89 [47]
	STGFAA	200.9, Rev. 2.2 (1994)			
	ICP/AES	200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4020-05 [64] I-4472-97 [75]
	DCP			D4190-15	See footnote [30]
21. Color, platinum cobalt units or dominant wavelength, hue, luminance purity	Colorimetric (ADMI)		2120 F-2021 [72]		
	Platinum cobalt visual comparison		2120 B-2021		I-1250-85 [2]
	Spectrophotometric				See footnote [18]
22. Copper—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration [32]		3111 B-2019 or 3111 C-2019	D1688-17 (A or B)	974.27 [3], p. 37 [9], I-3270-85 [2] or I-3271-85 [2]
	AA furnace		3113 B-2020	D1688-17 (C)	I-4274-89 [47]
	STGFAA	200.9, Rev. 2.2 (1994)			
	ICP/AES [32]	200.5, Rev 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	I-4471-97 [46]

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4020-05 [64], I-4472-97 [75]
	DCP [32]			D4190-15	See footnote [30]
23. Cyanide Total, mg/L	Automated UV digestion/distillation and Colorimetry				Kelada-01. [50]
	Segmented Flow Injection, In-Line Ultraviolet Digestion, followed by gas diffusion amperometry		4500-CN^- P-2021	D7511-12(17)	
	Manual distillation with $MgCl_2$, followed by any of the following:	335.4, Rev. 1.0 (1993) [52]	4500-CN^- B-2021 and C-2021	D2036-09(15)(A), D7284-20	10-204-00-1-X [51]
	Flow Injection, gas diffusion amperometry			D2036-09(15)(A) D7284-20	
	Titrimetric		4500-CN D-2021	D2036-09(15)(A)	p. 22 [9]
	Spectrophotometric, manual		4500-CN^- E-2021	D2036-09(15)(A)	I-3300-85 [2]
	Semi-Automated [19]	335.4, Rev. 1.0 (1993) [52]	4500-CN^- N-2021		10-204-00-1-X [51], I-4302-85 [2]
	Ion Chromatography			D2036-09(15)(A)	
	Ion Selective Electrode		4500-CN^- F-2021	D2036-09(15)(A)	
24. Cyanide—Available, mg/L	Cyanide Amenable to Chlorination (CATC); Manual distillation with $MgCl_2$, followed by Titrimetric or Spectrophotometric		4500-CN^- G-2021	D2036-09(15)(B)	
	Cyanide Amenable to Chlorination (CATC) by difference; Segmented Flow Injection, In-Line Ultraviolet Digestion, followed by gas diffusion amperometry[81]		4500-CN^- P-2021	D7511-12(17)	
	Flow injection and ligand exchange, followed by gas diffusion amperometry [54]		4500-CN^- Q-2021	D6888-16	OIA-1677-09 [40]
	Automated Distillation and Colorimetry (no UV digestion)				Kelada-01 [50]
24.A Cyanide—Free, mg/L	Flow Injection, followed by gas diffusion amperometry		4500-CN^- R-2021	D7237-18 (A)	OIA-1677-09 [40]
	Manual micro-diffusion and colorimetry			D4282-15	

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
25. Fluoride—Total, mg/L	Manual distillation [6], followed by any of the following:		4500-F B-2021	D1179-16 (A)	
	Electrode, manual		4500-F^- C-2021	D1179-16 (B)	
	Electrode, automated		4500-F^- G-2021		I-4327-85 [2]
	Colorimetric, (SPADNS)		4500-F^- D-2021		
	Automated complexone		4500-F^- E-2021		
	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997)	4110 B-2020 or C-2020	D4327-17	993.30 [3]
	CIE/UV		4140 B-2020	D6508-15	
26. Gold—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B-2019		
	AA furnace	231.2 (Issued 1978) [1]	3113 B-2020		
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3]
	DCP				See footnote [30]
27. Hardness—Total, as $CaCO_3$, mg/L	Automated colorimetric	130.1 (Issued 1971) [1]			
	Titrimetric (EDTA)		2340 C-2021	D1126-17	973.52B [3], I-1338-85 [2]
	Ca plus Mg as their carbonates, by any approved method for Ca and Mg (See Parameters 13 and 33), provided that the sum of the lowest point of quantitation for Ca and Mg is below the NPDES permit requirement for Hardness.		2340 B-2021		
28. Hydrogen ion (pH), pH units	Electrometric measurement		4500-H^+ B-2021	D1293-18 (A or B)	973.41 [3], I-1586-85 [2]
	Automated electrode	150.2 (Dec. 1982) [1]			See footnote [20], I-2587-85 [2]
29. Iridium—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B-2019		

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	AA furnace	235.2 (Issued 1978) [1]			
	ICP/MS		3125 B-2020		
30. Iron—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration [32]		3111 B-2019 or 3111 C-2019	D1068-15 (A)	974.27 [3], I-3381-85 [2]
	AA furnace		3113 B-2020	D1068-15 (B)	
	STGFAA	200.9, Rev. 2.2 (1994)			
	ICP/AES [32]	200.5, Rev. 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3]
	DCP [32]			D4190-15	See footnote [30]
31. Kjeldahl Nitrogen [5] - Total, (as N), mg/L	Manual digestion [19] and distillation or gas diffusion, followed by any of the following:		4500-N_{org} B-2021 or C-2021 and 4500-NH_3 B-2021	D3590-17 (A)	I-4515-91 [41]
	Titration		4500-NH_3 C-2021		973.48 [3]
	Nesslerization			D1426-15 (A)	
	Electrode		4500-NH_3 D-2021 or E-2021	D1426-15 (B)	
	Semi-automated phenate	350.1, Rev. 2.0 (1993)	4500-NH_3 G-2021 or 4500-NH_3 H-2021		
	Manual phenate, salicylate, or other substituted phenols in Berthelot reaction-based methods		4500-NH_3 F-2021		See footnote [55]
	Automated gas diffusion, followed by conductivity cell analysis				Timberline Ammonia-001 [68]
	Automated gas diffusion followed by fluorescence detector analysis				FIAlab 100 [76]
	Automated Methods for TKN that do not require manual distillation				

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	Automated phenate, salicylate, or other substituted phenols in Berthelot reaction-based methods colorimetric (auto digestion and distillation)	351.1 (Rev. 1978)[1]			I-4551-78 [8]
	Semi-automated block digestor colorimetric (distillation not required)	351.2, Rev. 2.0 (1993)	4500-N_{org} D-2021	D3590-17 (B)	I-4515-91 [41]
	Block digester, followed by Auto distillation and Titration				See footnote [35]
	Block digester, followed by Auto distillation and Nesslerization				See footnote [36]
	Block Digester, followed by Flow injection gas diffusion (distillation not required)				See footnote [37]
	Digestion with peroxydisulfate, followed by Spectrophotometric (2,6-dimethylphenol)				Hach 10242 [70]
	Digestion with persulfate, followed by Colorimetric				NCASI TNTP W10900 [71]
32. Lead—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration [32]		3111 B-2019 or 3111 C-2019	D3559-15 (A or B)	974.27 [3], I-3399-85 [2]
	AA furnace		3113 B-2020	D3559-15 (D)	I-4403-89 [47]
	STGFAA	200.9, Rev. 2.2 (1994)			
	ICP/AES [32]	200.5, Rev. 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4472-97 [75]
	DCP [32]			D4190-15	See footnote [30]
	Voltammetry [11]			D3559-15 (C)	
33. Magnesium—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B-2019	D511-14 (B)	974.27 [3], I-3447-85 [2]

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	ICP/AES	200.5, Rev. 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3]
	DCP				See footnote [30]
	Ion Chromatography			D6919-17	
34. Manganese—Total,[4] mg/L	Digestion[4], followed by any of the following:				
	AA direct aspiration [32]		3111 B-2019 or 3111 C-2019	D858-17 (A or B)	974.27 [3], I-3454-85 [2]
	AA furnace		3113 B-2020	D858-17 (C)	
	STGFAA	200.9, Rev. 2.2 (1994)			
	ICP/AES [32]	200.5, Rev. 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4472-97 [75]
	DCP [32]			D4190-15	See footnote [30]
35. Mercury—Total, mg/L	Cold vapor, Manual	245.1, Rev. 3.0 (1994)	3112 B-2020	D3223-17	977.22 [3], I-3462-85 [2]
	Cold vapor, Automated	245.2 (Issued 1974)[1]			
	Cold vapor atomic fluorescence spectrometry (CVAFS)	245.7 Rev. 2.0 (2005) [17]			I-4464-01 [65]
	Purge and Trap CVAFS	1631E [39]			
36. Molybdenum—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 D-2019		I-3490-85 [2]
	AA furnace		3113 B-2020		I-3492-96 [43]
	ICP/AES	200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4472-97 [75]

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	DCP				See footnote [30]
37. Nickel—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration [32]		3111 B-2019 or 3111 C-2019	D1886-14 (A or B)	I-3499-85 [2]
	AA furnace		3113 B-2020	D1886-14 (C)	I-4503-89 [47]
	STGFAA	200.9, Rev. 2.2 (1994)			
	ICP/AES [32]	200.5, Rev. 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4020-05 [64], I-4472-97 [75]
	DCP [32]			D4190-15	See footnote [30]
38. Nitrate (as N), mg/L	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997)	4110 B-2020 or C-2020	D4327-17	993.30 [3]
	CIE/UV		4140 B-2020	D6508-15	
	Ion Selective Electrode		4500-NO_3^- D-2019		
	Colorimetric (Brucine sulfate)	352.1 (Issued 1971)[1]			973.50 [3], 419D [80], p. 28 [9]
	Spectrophotometric (2,6-dimethylphenol)				Hach 10206 [69]
	Nitrate-nitrite N minus Nitrite N (See parameters 39 and 40)				
39. Nitrate-nitrite (as N), mg/L	Cadmium reduction, Manual		4500-NO_3^- E-2019	D3867-16 (B)	
	Cadmium reduction, Automated	353.2, Rev. 2.0 (1993)	4500-NO_3^- F-2019 or 4500-NO_3^- I-2019	D3867-16 (A)	I-2545-90 [47]
	Automated hydrazine		4500-NO_3^- H-2019		
	Reduction/Colorimetric				See footnote [56]

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997)	4110 B-2020 or C-2020	D4327-17	993.30 [3]
	CIE/UV		4140 B-2020	D6508-15	
	Enzymatic reduction, followed by automated colorimetric determination			D7781-14	I-2547-11 [66] I-2548-11 [66] N07-0003 [67]
	Enzymatic reduction, followed by manual colorimetric determination		4500-NO_3^- J-2018		
	Spectrophotometric (2,6-dimethylphenol)				Hach 10206 [69]
40. Nitrite (as N), mg/L	Spectrophotometric: Manual		4500-NO_2^- B-2021		See footnote [22]
	Automated (Diazotization)				I-4540-85 [2], See footnote [56] I-2540-90 [74]
	Automated (*bypass cadmium reduction)	353.2, Rev. 2.0 (1993)	4500-NO_3^- F-2019 4500-NO_3 I-2019	D3867-16 (A)	I-4545-85 [2]
	Manual (*bypass cadmium or enzymatic reduction)		4500-NO_3^- E-2019, 4500-NO_3^- J-2018	D3867-16 (B)	
	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997)	4110 B-2020 or C-2020	D4327-17	993.30 [3]
	CIE/UV		4140 B-2020	D6508-15	
	Automated (*bypass Enzymatic reduction)			D7781-14	I-2547-11 [66] I-2548-11 [66] N07-0003 [67]
41. Oil and grease—Total recoverable, mg/L	Hexane extractable material (HEM): *n*-Hexane extraction and gravimetry	1664 Rev. B [38]	5520 B or G-2021 [34]		
	Silica gel treated HEM (SGT-HEM): Silica gel treatment and gravimetry	1664 Rev. B [38]	5520 B or G-2021 [34] and 5520 F-2021 [34]		
42. Organic carbon—Total (TOC), mg/L	Combustion		5310 B-2014	D7573-18a[e1]	973.47 [3], p. 14 [21]

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	Heated persulfate or UV persulfate oxidation		5310 C-2014 5310 D-2011	D4839-03(17)	973.47[3], p. 14 [21]
43. Organic nitrogen (as N), mg/L	Total Kjeldahl N (Parameter 31) minus ammonia N (Parameter 4)				
44. Ortho-phosphate (as P), mg/L	Ascorbic acid method:				
	Automated	365.1, Rev. 2.0 (1993)	4500-P F-2021 or G-2021		973.56 [3], I-4601-85 [2], I-2601-90 [74]
	Manual, single-reagent		4500-P E-2021	D515-88 (A)	973.55 [3]
	Manual, two-reagent	365.3 (Issued 1978) [1]			
	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997)	4110 B-2020 or C-2020	D4327-17	993.30 [3]
	CIE/UV		4140 B-2020	D6508-15	
45. Osmium—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 D-2019		
	AA furnace	252.2 (Issued 1978) [1]			
46. Oxygen, Dissolved, mg/L	Winkler (Azide modification)		4500-O (B-F)-2021	D888-18 (A)	973.45B [3], I-1575-78 [8]
	Electrode		4500-O G-2021	D888-18 (B)	I-1576-78 [8]
	Luminescence-Based Sensor		4500-O H-2021	D888-18 (C)	See footnotes [57], [58]
47. Palladium—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B-2019		
	AA furnace	253.2 (Issued 1978) [1]			
	ICP/MS		3125 B-2020		
	DCP				See footnote [30]
48. Phenols, mg/L	Manual distillation [23], followed by any of the following:	420.1 (Rev. 1978) [1]	5530 B-2021	D1783-01(12)	

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	Colorimetric (4AAP) manual	420.1 (Rev. 1978) [1]	5530 D-2021 [24]	D1783-01(12) (A or B)	
	Automated colorimetric (4AAP)	420.4 Rev. 1.0 (1993)			
49. Phosphorus (elemental), mg/L	Gas-liquid chromatography				See footnote [25]
50. Phosphorus—Total, mg/L	Digestion [19], followed by any of the following:		4500-P B (5)-2021		973.55 [3]
	Manual	365.3 (Issued 1978) [1]	4500-P E-2021	D515-88 (A)	
	Automated ascorbic acid reduction	365.1 Rev. 2.0 (1993)	4500-P (F-H)-2021		973.56 [3], I-4600-85 [2]
	ICP/AES [4, 32]	200.7, Rev. 4.4 (1994)	3120 B-2020		I-4471-97 [46]
	Semi-automated block digestor (TKP digestion)	365.4 (Issued 1974) [1]		D515-88 (B)	I-4610-91 [44]
	Digestion with persulfate, followed by Colorimetric				NCASI TNTP W10900 [71]
51. Platinum—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B-2019		
	AA furnace	255.2 (Issued 1978) [1]			
	ICP/MS		3125 B-2020		
	DCP				See footnote [30]
52. Potassium—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B-2019		973.53 [3], I-3630-85 [2]
	ICP/AES	200.7, Rev. 4.4 (1994)	3120 B-2020		
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3]
	Flame photometric		3500-K B-2020		
	Electrode		3500-K C-2020		
	Ion Chromatography			D6919-17	
53. Residue—Total, mg/L	Gravimetric, 103-105°		2540 B-2020		I-3750-85 [2]

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
54. Residue—Filterable, mg/L	Gravimetric, 180°		2540 C-2020	D5907-18 (B)	I-1750-85 [2]
55. Residue—Non-filterable (TSS), mg/L	Gravimetric, 103-105° post-washing of residue		2540 D-2020	D5907-18 (A)	I-3765-85 [2]
56. Residue—Settleable, mg/L	Volumetric (Imhoff cone), or gravimetric		2540 F-2020		
57. Residue—Volatile, mg/L	Gravimetric, 550°	160.4 (Issued 1971) [1]	2540 E-2020		I-3753-85 [2]
58. Rhodium—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration, or		3111 B-2019		
	AA furnace	265.2 (Issued 1978) [1]			
	ICP/MS		3125 B-2020		
59. Ruthenium—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration, or		3111 B-2019		
	AA furnace	267.2 [1]			
	ICP/MS		3125 B-2020		
60. Selenium—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA furnace		3113 B-2020	D3859-15 (B)	I-4668-98 [45]
	STGFAA	200.9, Rev. 2.2 (1994)			
	ICP/AES [32]	200.5, Rev 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4020-05 [64] I-4472-97 [75]
	AA gaseous hydride		3114 B-2020, or 3114 C-2020	D3859-15 (A)	I-3667-85 [2]
61. Silica—Dissolved, [33] mg/L	0.45-micron filtration followed by any of the following:				
	Colorimetric, Manual		4500-SiO_2 C-2021	D859-16	I-1700-85 [2]
	Automated (Molybdosilicate)		4500-SiO_2 E-2021 or F-2021		I-2700-85 [2]

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	ICP/AES	200.5, Rev. 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020		I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3]
62. Silver—Total,[4, 28] mg/L	Digestion [4, 26], followed by any of the following:				
	AA direct aspiration		3111 B-2019 or 3111 C-2019		974.27 [3], p. 37 [9], I-3720-85 [2]
	AA furnace		3113 B-2020		I-4724-89 [47]
	STGFAA	200.9, Rev. 2.2 (1994)			
	ICP/AES	200.5, Rev. 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4472-97 [75]
	DCP				See footnote [30]
63. Sodium—Total,[4] mg/L	Digestion [4], followed by any of thc following:				
	AA direct aspiration		3111 B-2019		973.54 [3], I-3735-85 [2]
	ICP/AES	200.5, Rev. 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020		I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3]
	DCP				Scc footnotc [30]
	Flame photometric		3500-Na B-2020		
	Ion Chromatography			D6919-17	
64. Specific conductance, micromhos/cm at 25 °C	Wheatstone bridge	120.1 (Rev. 1982) [1]	2510 B-2021	D1125-95(99) (A)	973.40 [3], I-2781-85 [2]
65. Sulfate (as SO_4), mg/L	Automated colorimetric	375.2, Rev. 2.0 (1993)	4500-SO_4^{2-} F-2021 or G-2021		

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	Gravimetric		4500-SO_4^{2-} C-2021 or D-2021		925.54 [3]
	Turbidimetric		4500-SO_4^{2-} E-2021	D516-16	
	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997)	4110 B-2020 or C-2020	D4327-17	993.30[3], I-4020-05 [64]
	ClE/UV		4140 B-2020	D6508-15	
66. Sulfide (as S), mg/L	Sample Pretreatment		4500-S^{2-} B, C-2021		
	Titrimetric (iodine)		4500-S^{2-} F-2021		I-3840-85 [2]
	Colorimetric (methylene blue)		4500-S^2 D-2021		
	Ion Selective Electrode		4500-S^{2-} G-2021	D4658-15	
67. Sulfite (as SO_3), mg/L	Titrimetric (iodine-iodate)		4500-SO_3^{2-} B-2021		
68. Surfactants, mg/L	Colorimetric (methylene blue)		5540 C-2021	D2330-20	
69. Temperature, ° C	Thermometric		2550 B-2010		See footnote [29]
70. Thallium—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B-2019		
	AA furnace	279.2 (Issued 1978) [1]	3113 B-2020		
	STGFAA	200.9, Rev. 2.2 (1994)			
	ICP/AES	200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4471-97 [46] I-4472-97 [75]
71. Tin—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B-2019		I-3850-78 [8]
	AA furnace		3113 B-2020		
	STGFAA	200.9, Rev. 2.2 (1994)			

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	ICP/AES	200.5, Rev. 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)			
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3]
72. Titanium—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 D-2019		
	AA furnace	283.2 (Issued 1978) [1]			
	ICP/AES	200.7, Rev. 4.4 (1994)			
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3]
	DCP				See footnote [30]
73. Turbidity, NTU [49]	Nephelometric	180.1, Rev. 2.0 (1993)	2130 B-2020	D1889-00	I-3860-85 [2] See footnotes [59, 60, 61]
74. Vanadium—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 D-2019		
	AA furnace		3113 B-2020	D3373-17	
	ICP/AES	200.5, Rev. 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4020-05 [64]
	DCP			D4190-15	See footnote [30]
75. Zinc—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration [32]		3111 B-2019 or 3111 C-2019	D1691-17 (A or B)	974.27 [3], p. 37 [9], I-3900-85 [2]
	AA furnace	289.2 (Issued 1978) [1]			

Parameter	Methodology [53]	EPA [48]	Standard Methods [78]	ASTM	USGS/AOAC/ Other
	ICP/AES [32]	200.5, Rev. 4.2 (2003) [62]; 200.7, Rev. 4.4 (1994)	3120 B-2020	D1976-20	I-4471-97 [46]
	ICP/MS	200.8, Rev. 5.4 (1994)	3125 B-2020	D5673-16	993.14 [3], I-4020-05 [64], I-4472-97 [75]
	DCP [32]			D4190-15	See footnote [30]
76. Acid Mine Drainage		1627 [63]			
77. Hydrogen Peroxide, mg/L	Spectrophotometric, Ferric Thiocyanate		4500-H_2O_2 B-2020		
78. Peracetic Acid, mg/L	Spectrophotometric, DPD		4500-PAA B-2019		

Table Ib Notes:

[1] Methods for Chemical Analysis of Water and Wastes, EPA-600/4-79-020. Revised March 1983 and 1979, where applicable. U.S. EPA.

[2] Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments, Techniques of Water-Resource Investigations of the U.S. Geological Survey, Book 5, Chapter A1., unless otherwise stated. 1989. USGS.

[3] Official Methods of Analysis of the Association of Official Analytical Chemists, Methods Manual, Sixteenth Edition, 4th Revision, 1998. AOAC International.

[4] For the determination of total metals (which are equivalent to total recoverable metals) the sample is not filtered before processing. A digestion procedure is required to solubilize analytes in suspended material and to break down organic-metal complexes . For non-platform graphite furnace atomic absorption determinations, a digestion using nitric acid (as specified in Section 4.1.3 of Methods for Chemical Analysis of Water and Wastes) is required prior to analysis. The procedure used should subject the sample to gentle acid refluxing, and at no time should the sample be taken to dryness. For direct aspiration flame atomic absorption (FLAA) determinations, a combination acid (nitric and hydrochloric acids) digestion is preferred, prior to analysis. The approved total recoverable digestion is described as Method 200.2 in Supplement I of "Methods for the Determination of Metals in Environmental Samples" EPA/600R-94/111, May 1994, and is reproduced in EPA Methods 200.7, 200.8, and 200.9 from the same Supplement. However, when using the gaseous hydride technique or for the determination of certain elements such as antimony, arsenic, selenium, silver, and tin by non-EPA graphite furnace atomic absorption methods,

mercury by cold vapor atomic absorption, the noble metals and titanium by FLAA, a specific or modified sample digestion procedure may be required, and, in all cases the referenced method write-up should be consulted for specific instruction and/or cautions. For analyses using inductively coupled plasma-atomic emission spectrometry (ICP-AES), the direct current plasma (DCP) technique or EPA spectrochemical techniques (platform furnace AA, ICP-AES, and ICP-MS), use EPA Method 200.2 or an approved alternate procedure (*e.g.*, CEM microwave digestion, which may be used with certain analytes as indicated in Table Ib of this section); the total recoverable digestion procedures in EPA Methods 200.7, 200.8, and 200.9 may be used for those respective methods. Regardless of the digestion procedure, the results of the analysis after digestion procedure are reported as "total" metals.

[5] Copper sulfate or other catalysts that have been found suitable may be used in place of mercuric sulfate.

[6] Manual distillation is not required if comparability data on representative effluent samples are on file to show that this preliminary distillation step is not necessary; however, manual distillation will be required to resolve any controversies. In general, the analytical method should be consulted regarding the need for distillation. If the method is not clear, the laboratory may compare a minimum of 9 different sample matrices to evaluate the need for distillation. For each matrix, a matrix spike and matrix spike duplicate are analyzed both with and without the distillation step (for a total of 36 samples, assuming 9 matrices). If results are comparable, the laboratory may dispense with the distillation step for future analysis. Comparable is defined as < 20% RPD for all tested matrices). Alternatively, the two populations of spike recovery percentages may be compared using a recognized statistical test.

[7] Industrial Method Number 379-75 WE Ammonia, Automated Electrode Method, Technicon Auto Analyzer II. February 19, 1976. Bran & Luebbe Analyzing Technologies Inc.

[8] The approved method is that cited in Methods for Determination of Inorganic Substances in Water and Fluvial Sediments, Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A1. 1979. USGS.

[9] American National Standard on Photographic Processing Effluents. April 2, 1975. American National Standards Institute.

[10] In-Situ Method 1003-8-2009, Biochemical Oxygen Demand (BOD) Measurement by Optical Probe. 2009. In-Situ Incorporated.

[11] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

[12] Carbonaceous biochemical oxygen demand ($CBOD_5$) must not be confused with the traditional BOD_5

test method which measures "total 5-day BOD." The addition of the nitrification inhibitor is not a procedural option but must be included to report the $CBOD_5$ parameter. A discharger whose permit requires reporting the traditional BOD_5 may not use a nitrification inhibitor in the procedure for reporting the results. Only when a discharger's permit specifically states $CBOD_5$ is required can the permittee report data using a nitrification inhibitor.

[13] OIC Chemical Oxygen Demand Method. 1978. Oceanography International Corporation.

[14] Method 8000, Chemical Oxygen Demand, Hach Handbook of Water Analysis, 1979. Hach Company.

[15] The back-titration method will be used to resolve controversy.

[16] Orion Research Instruction Manual, Residual Chlorine Electrode Model 97-70. 1977. Orion Research Incorporated. The calibration graph for the Orion residual chlorine method must be derived using a reagent blank and three standard solutions, containing 0.2, 1.0, and 5.0 mL 0.00281 N potassium iodate/100 mL solution, respectively.

[17] Method 245.7, Mercury in Water by Cold Vapor Atomic Fluorescence Spectrometry, EPA-821-R-05-001. Revision 2.0, February 2005. US EPA.

[18] National Council of the Paper Industry for Air and Stream Improvement (NCASI) Technical Bulletin 253 (1971) and Technical Bulletin 803, May 2000.

[19] When using a method with block digestion, this treatment is not required.

[20] Industrial Method Number 378-75WA, Hydrogen ion (pH) Automated Electrode Method, Bran & Luebbe (Technicon) Autoanalyzer II. October 1976. Bran & Luebbe Analyzing Technologies.

[21] Methods for Analysis of Organic Substances in Water and Fluvial Sediments, Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A3, (1972 Revised 1987). 1987. USGS.

[22] Method 8507, Nitrogen, Nitrite-Low Range, Diazotization Method for Water and Wastewater. 1979. Hach Company.

[23] Just prior to distillation, adjust the sulfuric-acid-preserved sample to pH 4 with 1 + 9 NaOH.

[24] The colorimetric reaction must be conducted at a pH of 10.0 ± 0.2.

[25] Addison, R.F., and R.G. Ackman. 1970. Direct Determination of Elemental Phosphorus by Gas-Liquid Chromatography, *Journal of Chromatography*, 47(3):421-426.

[26] Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists as an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer

of sodium thiosulfate and sodium hydroxide to pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$ and NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the approved method is satisfactory.

[27] The use of EDTA decreases method sensitivity. Analysts may omit EDTA or replace with another suitable complexing reagent provided that all method-specified quality control acceptance criteria are met.

[28] For samples known or suspected to contain high levels of silver (*e.g.*, in excess of 4 mg/L), cyanogen iodide should be used to keep the silver in solution for analysis. Prepare a cyanogen iodide solution by adding 4.0 mL of concentrated NH_4OH, 6.5 g of KCN, and 5.0 mL of a 1.0 N solution of I_2 to 50 mL of reagent water in a volumetric flask and dilute to 100.0 mL. After digestion of the sample, adjust the pH of the digestate to >7 to prevent the formation of HCN under acidic conditions. Add 1 mL of the cyanogen iodide solution to the sample digestate and adjust the volume to 100 mL with reagent water (NOT acid). If cyanogen iodide is added to sample digestates, then silver standards must be prepared that contain cyanogen iodide as well. Prepare working standards by diluting a small volume of a silver stock solution with water and adjusting the pH>7 with NH_4OH. Add 1 mL of the cyanogen iodide solution and let stand 1 hour. Transfer to a 100-mL volumetric flask and dilute to volume with water.

[29] "Water Temperature-Influential Factors, Field Measurement and Data Presentation," Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 1, Chapter D1. 1975. USGS.

[30] Method AES0029, Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes. 1986-Revised 1991. Thermo Jarrell Ash Corporation.

[31] In-Situ Method 1004-8-2009, Carbonaceous Biochemical Oxygen Demand (CBOD) Measurement by Optical Probe. 2009. In-Situ Incorporated.

[32] Microwave-assisted digestion may be employed for this metal, when analyzed by this methodology. Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals. April 16, 1992. CEM Corporation.

[33] When determining boron and silica, only plastic, PTFE, or quartz laboratory ware may be used from start until completion of analysis.

[34] Only use *n*-hexane (*n*-Hexane—85% minimum purity, 99.0% min. saturated C6 isomers, residue less than 1 mg/L) extraction solvent when determining Oil and Grease parameters—Hexane Extractable Material (HEM), or Silica Gel Treated HEM (analogous to EPA Methods 1664 Rev. A and 1664 Rev. B). Use of other extraction solvents is prohibited.

[35] Method PAI-DK01, Nitrogen, Total Kjeldahl, Block Digestion, Steam Distillation, Titrimetric Detection. Revised December 22, 1994. OI Analytical.

[36] Method PAI-DK02, Nitrogen, Total Kjeldahl, Block Digestion, Steam Distillation, Colorimetric Detection. Revised December 22, 1994. OI Analytical.

[37] Method PAI-DK03, Nitrogen, Total Kjeldahl, Block Digestion, Automated FIA Gas Diffusion. Revised December 22, 1994. OI Analytical.

[38] Method 1664 Rev. B, *n*-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated *n*-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry, EPA-821-R-10-001, February 2010, U.S. EPA.

[39] Method 1631, Revision E, Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry, EPA-821-R-02-019. Revision E. August 2002, U.S. EPA. The application of clean techniques described in EPA's Method 1669: *Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels,* EPA-821-R-96-011, are recommended to preclude contamination at low-level, trace metal determinations.

[40] Method OIA-1677-09, Available Cyanide by Ligand Exchange and Flow Injection Analysis (FIA). 2010. OI Analytical.

[41] Open File Report 00-170, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Ammonium Plus Organic Nitrogen by a Kjeldahl Digestion Method and an Automated Photometric Finish that Includes Digest Cleanup by Gas Diffusion. 2000. USGS.

[42] Open File Report 93-449, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Chromium in Water by Graphite Furnace Atomic Absorption Spectrophotometry. 1993. USGS.

[43] Open File Report 97-198, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Molybdenum by Graphite Furnace Atomic Absorption Spectrophotometry. 1997. USGS.

[44] Open File Report 92-146, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory Determination of Total Phosphorus by Kjeldahl Digestion Method and an Automated Colorimetric Finish That Includes Dialysis. 1992. USGS.

[45] Open File Report 98-639, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Arsenic and Selenium in Water and Sediment by Graphite Furnace-Atomic Absorption Spectrometry. 1999. USGS.

[46] Open File Report 98-165, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Elements in Whole-water Digests Using Inductively Coupled Plasma-Optical Emission Spectrometry and Inductively Coupled Plasma-Mass Spectrometry. 1998. USGS.

[47] Open File Report 93-125, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments. 1993. USGS.

[48] Unless otherwise indicated, all EPA methods, excluding EPA Method 300.1, are published in U.S. EPA. May 1994. Methods for the Determination of Metals in Environmental Samples, Supplement I, EPA/600/R-94/111; or U.S. EPA. August 1993. Methods for the Determination of Inorganic Substances in Environmental Samples, EPA/600/R-93/100. EPA Method 300.1 is U.S. EPA. Revision 1.0, 1997, including errata cover sheet April 27, 1999. Determination of Inorganic Ions in Drinking Water by Ion Chromatography.

[49] Styrene divinyl benzene beads (*e.g.*, AMCO-AEPA-1 or equivalent) and stabilized formazin (*e.g.*, Hach StablCal™ or equivalent) are acceptable substitutes for formazin.

[50] Kelada-01, Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate, EPA 821-B-01-009, Revision 1.2, August 2001. US EPA. Note: A 450-W UV lamp may be used in this method instead of the 550-W lamp specified if it provides performance within the quality control (QC) acceptance criteria of the method in a given instrument. Similarly, modified flow cell configurations and flow conditions may be used in the method, provided that the QC acceptance criteria are met.

[51] QuikChem Method 10-204-00-1-X, Digestion and Distillation of Total Cyanide in Drinking and Wastewaters using MICRO DIST and Determination of Cyanide by Flow Injection Analysis. Revision 2.2, March 2005. Lachat Instruments.

[52] When using sulfide removal test procedures described in EPA Method 335.4, reconstitute particulate that is filtered with the sample prior to distillation.

[53] Unless otherwise stated, if the language of this table specifies a sample digestion and/or distillation "followed by" analysis with a method, approved digestion and/or distillation are required prior to analysis.

[54] Samples analyzed for available cyanide using OI Analytical method OIA-1677-09 or ASTM method D6888-16 that contain particulate matter may be filtered prior to the ligand exchange reagents have been added to the samples.

[55] Analysts should be aware that pH optima and chromophore absorption maxima might differ when

phenol is replaced by a substituted phenol as the color reagent in Berthelot Reaction ("phenol-hypochlorite reaction") colorimetric ammonium determination methods. For example, when phenol is used as the color reagent, pH optimum and wavelength of maximum absorbance are about 11.5 and 635 nm, respectively—see, Patton, C.J. and S.R. Crouch. March 1977. *Anal. Chem.* 49:464-469. These reaction parameters increase to pH > 12.6 and 665 nm when salicylate is used as the color reagent—see, Krom, M.D. April 1980. *The Analyst* 105:305-316.

[56] Easy (1-Reagent) Nitrate Method, Revision November 12, 2011. Craig Chinchilla.

[57] Hach Method 10360, Luminescence Measurement of Dissolved Oxygen in Water and Wastewater and for Use in the Determination of BOD_5 and $CBOD_5$. Revision 1.2, October 2011. Hach Company. This method may be used to measure dissolved oxygen when performing the methods approved in Table Ib of this section for measurement of biochemical oxygen demand (BOD) and carbonaceous biochemical oxygen demand (CBOD).

[58] In-Situ Method 1002-8-2009, Dissolved Oxygen (DO) Measurement by Optical Probe. 2009. In-Situ Incorporated.

[59] Mitchell Method M5331, Determination of Turbidity by Nephelometry. Revision 1.0, July 31, 2008. Leck Mitchell.

[60] Mitchell Method M5271, Determination of Turbidity by Nephelometry. Revision 1.0, July 31, 2008. Leck Mitchell.

[61] Orion Method AQ4500, Determination of Turbidity by Nephelometry. Revision 5, March 12, 2009. Thermo Scientific.

[62] EPA Method 200.5, Determination of Trace Elements in Drinking Water by Axially Viewed Inductively Coupled Plasma-Atomic Emission Spectrometry, EPA/600/R-06/115. Revision 4.2, October 2003. US EPA.

[63] Method 1627, Kinetic Test Method for the Prediction of Mine Drainage Quality, EPA-821-R-09-002. December 2011. US EPA.

[64] Techniques and Methods Book 5-B1, Determination of Elements in Natural-Water, Biota, Sediment and Soil Samples Using Collision/Reaction Cell Inductively Coupled Plasma-Mass Spectrometry, Chapter 1, Section B, Methods of the National Water Quality Laboratory, Book 5, Laboratory Analysis, 2006. USGS.

[65] Water-Resources Investigations Report 01-4132, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Organic Plus Inorganic Mercury in Filtered and Unfiltered Natural Water with Cold Vapor-Atomic Fluorescence Spectrometry, 2001. USGS.

[66] USGS Techniques and Methods 5–B8, Chapter 8, Section B, Methods of the National Water Quality Laboratory Book 5, Laboratory Analysis, 2011 USGS.

[67] NECi Method N07-0003, "Nitrate Reductase Nitrate-Nitrogen Analysis," Revision 9.0, March 2014, The Nitrate Elimination Co., Inc.

[68] Timberline Instruments, LLC Method Ammonia-001, "Determination of Inorganic Ammonia by Continuous Flow Gas Diffusion and Conductivity Cell Analysis," June 2011, Timberline Instruments, LLC.

[69] Hach Company Method 10206, "Spectrophotometric Measurement of Nitrate in Water and Wastewater," Revision 2.1, January 2013, Hach Company.

[70] Hach Company Method 10242, "Simplified Spectrophotometric Measurement of Total Kjeldahl Nitrogen in Water and Wastewater," Revision 1.1, January 2013, Hach Company.

[71] National Council for Air and Stream Improvement (NCASI) Method TNTP-W10900, "Total (Kjeldahl) Nitrogen and Total Phosphorus in Pulp and Paper Biologically Treated Effluent by Alkaline Persulfate Digestion," June 2011, National Council for Air and Stream Improvement, Inc.

[72] The pH adjusted sample is to be adjusted to 7.6 for NPDES reporting purposes.

[73] I-2057-85 U.S. Geological Survey Techniques of Water-Resources Investigations, Book 5, Chap. A11989, Methods for Determination of Inorganic Substances in Water and Fluvial Sediments, 1989.

[74] Methods I-2522-90, I-2540-90, and I-2601-90 U.S. Geological Survey Open-File Report 93-125, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory–Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments, 1993.

[75] Method I-1472-97, U.S. Geological Survey Open-File Report 98-165, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory–Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments, 1998.

[76] FIAlab Instruments, Inc. Method FIAlab 100, "Determination of Inorganic Ammonia by Continuous Flow Gas Diffusion and Fluorescence Detector Analysis", April 4, 2018, FIAlab Instruments, Inc.

[77] MACHEREY-NAGEL GmbH and Co. Method 036/038 NANOCOLOR® COD LR / HR, "Spectrophotometric Measurement of Chemical Oxygen Demand in Water and Wastewater", Revision 1.5, May 2018, MACHEREY-NAGEL GmbH and Co. KG.

[78] Please refer to the following applicable Quality Control Sections: Part 2000 Methods, Physical and Aggregate Properties 2020 (2021); Part 3000 Methods, Metals, 3020 (2021); Part 4000 Methods, Inorganic Nonmetallic Constituents, 4020 (2022); Part 5000 Methods, and Aggregate Organic

Constituents, 5020 (2022). These Quality Control Standards are available for download at *www.standardmethods.org* at no charge.

[79] Each laboratory may establish its own control limits by performing at least 25 glucose-glutamic acid (GGA) checks over several weeks or months and calculating the mean and standard deviation. The laboratory may then use the mean + 3 standard deviations as the control limit for future GGA checks. However, GGA acceptance criteria can be no wider than 198 ± 30.5 mg/L for BOD_5. GGA acceptance criteria for CBOD must be either 198 ± 30.5 mg/L, or the lab may develop control charts under the following conditions: dissolved oxygen uptake from the seed contribution is between 0.6 – 1.0 mg/L; control charts are performed on at least 25 GGA checks with three standard deviations from the derived mean; the RSD must not exceed 7.5%; and any single GGA value cannot be less than 150 mg/L or higher than 250 mg/L.

[80] The approved method is that cited in *Standard Methods for the Examination of Water and Wastewater*, 14th Edition, 1976.

[81] Prior to in-line UV digestion followed by gas diffusion amperometry, the sample must be treated as specified in SM 4500-CN- P-2021 (4a, b, and c) or ASTM D2036-09(15) (B, steps 21.1.1 through 21.1.5)

TABLE Ic—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE Organic COMPOUNDS

Parameter [1]	Method	EPA [2, 7]	Standard Methods [16]	ASTM	Other
1. Acenaphthene	GC	610			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC	610	6440 B-2021	D4657-92 (98)	
2. Acenaphthylene	GC	610			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC	610	6440 B-2021	D4657-92 (98)	

Parameter [1]	Method	EPA [2, 7]	Standard Methods [16]	ASTM	Other
3. Acrolein	GC	603			
	GC/MS	624.1 [4], 1624B			
4. Acrylonitrile	GC	603			
	GC/MS	624.1 [4], 1624B			O-4127-96 [12]
5. Anthracene	GC	610			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC	610	6440 B-2021	D4657-92 (98)	
6. Benzene	GC	602	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
7. Benzidine	Spectro-photometric				See footnote [3] p.1
	GC/MS	625.1 [5], 1625B	6410 B-2020		
	HPLC	605			
8. Benzo(a)anthracene	GC	610			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC	610	6440 B-2021	D4657-92 (98)	

Parameter [1]	Method	EPA [2, 7]	Standard Methods [16]	ASTM	Other
9. Benzo(a)pyrene	GC	610			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC	610	6440 B-2021	D4657-92 (98)	
10. Benzo(b)fluoranthene	GC	610			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC	610	6440 B-2021	D4657-92 (98)	
11. Benzo(g,h,i)perylene	GC	610			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC	610	6440 B-2021	D4657-92 (98)	
12. Benzo(k)fluoranthene	GC	610			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC	610	6440 B-2021	D4657-92 (98)	
13. Benzyl chloride	GC				See footnote [3] p. 130

Parameter [1]	Method	EPA [2,7]	Standard Methods [16]	ASTM	Other
	GC/MS				See footnote [6] p. S102
14. Butyl benzyl phthalate	GC	606			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
15. bis(2-Chloroethoxy) methane	GC	611			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
16. bis(2-Chloroethyl) ether	GC	611			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
17. bis(2-Ethylhexyl) phthalate	GC	606			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
18. Bromodichloromethane	GC	601	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
19. Bromoform	GC	601	6200 C-2020		

Parameter [1]	Method	EPA [2, 7]	Standard Methods [16]	ASTM	Other
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
20. Bromomethane	GC	601	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
21. 4-Bromophenyl phenyl ether	GC	611			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
22. Carbon tetrachloride	GC	601	6200 C-2020		See footnote [3] p. 130
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
23. 4-Chloro-3-methyl phenol	GC	604	6420 B-2021		
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
24. Chlorobenzene	GC	601, 602	6200 C-2020		See footnote [3] p. 130.
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12] O-4436-16 [13]
25. Chloroethane	GC	601	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12]

Parameter [1]	Method	EPA [2, 7]	Standard Methods [16]	ASTM	Other
26. 2-Chloroethylvinyl ether	GC	601			
	GC/MS	624.1, 1624B			
27. Chloroform	GC	601	6200 C-2020		See footnote [3] p. 130
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
28. Chloromethane	GC	601	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
29. 2-Chloronaphthalene	GC	612			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
30. 2-Chlorophenol	GC	604	6420 B-2021		
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
31. 4-Chlorophenyl phenyl ether	GC	611			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
32. Chrysene	GC	610			

Parameter [1]	Method	EPA [2, 7]	Standard Methods [16]	ASTM	Other
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC	610	6440 B-2021	D4657-92 (98)	
33. Dibenzo(a,h)anthracene	GC	610			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC	610	6440 B-2021	D4657-92 (98)	
34. Dibromochloromethane	GC	601	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
35. 1,2-Dichlorobenzene	GC	601, 602	6200 C-2020		
	GC/MS	624.1, 1625B	6200 B-2020		See footnote [8] p. 27, O-4127-96 [12], O-4436-16 [13]
36. 1,3-Dichlorobenzene	GC	601, 602	6200 C-2020		
	GC/MS	624.1, 1625B	6200 B-2020		See footnote [8] p. 27, O-4127-96 [12]

Parameter [1]	Method	EPA [2,7]	Standard Methods [16]	ASTM	Other
37. 1,4-Dichlorobenzene	GC	601, 602	6200 C-2020		
	GC/MS	624.1, 1625B	6200 B-2020		See footnote [8] p. 27, O-4127-96 [12], O-4436-16 [13]
38. 3,3'-Dichlorobenzidine	GC/MS	625.1, 1625B	6410 B-2020		
	HPLC	605			
39. Dichlorodifluoromethane	GC	601			
	GC/MS		6200 B-2020		O-4127-96 [12], O-4436-16 [13]
40. 1,1-Dichloroethane	GC	601	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
41. 1,2-Dichloroethane	GC	601	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
42. 1,1-Dichloroethene	GC	601	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]

Parameter [1]	Method	EPA [2, 7]	Standard Methods [16]	ASTM	Other
43. *trans*-1,2-Dichloroethene	GC	601	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
44. 2,4-Dichlorophenol	GC	604	6420 B-2021		
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
45. 1,2-Dichloropropane	GC	601	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12] O-4436-16 [13]
46. *cis*-1,3-Dichloropropene	GC	601	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
47. *trans*-1,3-Dichloropropene	GC	601	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
48. Diethyl phthalate	GC	606			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
49. 2,4-Dimethylphenol	GC	604	6420 B-2021		

Parameter [1]	Method	EPA [2, 7]	Standard Methods [16]	ASTM	Other
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
50. Dimethyl phthalate	GC	606			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
51. Di-*n*-butyl phthalate	GC	606			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
52. Di-*n*-octyl phthalate	GC	606			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
53. 2, 4-Dinitrophenol	GC	604	6420 B-2021		See footnote [8] p. 27
	GC/MS	625.1, 1625B	6410 B-2020		
54. 2,4-Dinitrotoluene	GC	609			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
55. 2,6-Dinitrotoluene	GC	609			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
56. Epichlorohydrin	GC				See footnote [3] p. 130

Parameter [1]	Method	EPA [2, 7]	Standard Methods [16]	ASTM	Other
	GC/MS				See footnote [6] p. S102
57. Ethylbenzene	GC	602	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
58. Fluoranthene	GC	610			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC	610	6440 B-2021	D4657-92 (98)	
59. Fluorene	GC	610			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC	610	6440 B-2021	D4657-92 (98)	
60. 1,2,3,4,6,7,8-Heptachloro-dibenzofuran	GC/MS	1613B [9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]
61. 1,2,3,4,7,8,9-Heptachloro-dibenzofuran	GC/MS	1613B [9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]
62. 1,2,3,4,6,7,8-Heptachloro-dibenzo-*p*-dioxin	GC/MS	1613B [9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]

Parameter [1]	Method	EPA [2, 7]	Standard Methods [16]	ASTM	Other
63. Hexachlorobenzene	GC	612			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
64. Hexachlorobutadiene	GC	612			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27, O-4127-96 [12]
65. Hexachlorocyclopentadiene	GC	612			
	GC/MS	625.1 [5], 1625B	6410 B-2020		See footnote [8], p. 27, O-4127-96 [12]
66. 1,2,3,4,7,8-Hexachloro-dibenzofuran	GC/MS	1613B [9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]
67. 1,2,3,6,7,8-Hexachloro-dibenzofuran	GC/MS	1613B [9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]
68. 1,2,3,7,8,9-Hexachloro-dibenzofuran	GC/MS	1613B [9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]
69. 2,3,4,6,7,8-Hexachloro-dibenzofuran	GC/MS	1613B [9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]

Parameter [1]	Method	EPA [2, 7]	Standard Methods [16]	ASTM	Other
70. 1,2,3,4,7,8-Hexachloro-dibenzo-*p*-dioxin	GC/MS	1613B [9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]
71. 1,2,3,6,7,8-Hexachloro-dibenzo-*p*-dioxin	GC/MS	1613B [9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]
72. 1,2,3,7,8,9-Hexachloro-dibenzo-*p*-dioxin	GC/MS	1613B [9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]
73. Hexachloroethane	GC	612			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27, O-4127-96 [12]
74. Indeno(1,2,3-c,d) pyrene	GC	610			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC	610	6440 B-2021	D4657-92 (98)	
75. Isophorone	GC	609			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
76. Methylene chloride	GC	601	6200 C-2020		See footnote [3] p. 130
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]

Parameter [1]	Method	EPA [2, 7]	Standard Methods [16]	ASTM	Other
77. 2-Methyl-4,6-dinitrophenol	GC	604	6420 B-2021		
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
78. Naphthalene	GC	610			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC	610	6440 B-2021		
79. Nitrobenzene	GC	609			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC			D4657-92 (98)	
80. 2-Nitrophenol	GC	604	6420 B-2021		
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
81. 4-Nitrophenol	GC	604	6420 B-2021		
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
82. N-Nitrosodimethylamine	GC	607			
	GC/MS	625.1 [5], 1625B	6410 B-2020		See footnote [8] p. 27

Parameter [1]	Method	EPA [2, 7]	Standard Methods [16]	ASTM	Other
83. N-Nitrosodi-*n*-propylamine	GC	607			
	GC/MS	625.1 [5], 1625B	6410 B-2020		See footnote [8] p. 27
84. N-Nitrosodiphenylamine	GC	607			
	GC/MS	625.1 [5], 1625B	6410 B-2020		See footnote [8] p. 27
85. Octachlorodibenzofuran	GC/MS	1613B [9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]
86. Octachlorodibenzo-*p*-dioxin	GC/MS	1613B [9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]
87. 2,2′-oxybis(1-chloropropane)[11] [also known as bis(2-Chloro-1-methylethyl) ether]	GC	611			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
88. 1,2,3,7,8-Pentachloro-dibenzofuran	GC/MS	1613B [9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]
89. 2,3,4,7,8-Pentachloro-dibenzofuran	GC/MS	1613B [9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]

Parameter [1]	Method	EPA [2, 7]	Standard Methods [16]	ASTM	Other
90. 1,2,3,7,8-Pentachloro-dibenzo-*p*-dioxin	GC/MS	1613B [9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]
91. Pentachlorophenol	GC	604	6420 B-2021		See footnote [3] p. 140
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
92. Phenanthrene	GC	610			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC	610	6440 B-2021	D4657-92 (98)	
93. Phenol	GC	604	6420 B-2021		
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
94. Pyrene	GC	610			
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
	HPLC	610	6440 B-2021	D4657-92 (98)	
95. 2,3,7,8-Tetrachloro-dibenzofuran	GC/MS	1613B [9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]

Parameter [1]	Method	EPA [2,7]	Standard Methods [16]	ASTM	Other
96. 2,3,7,8-Tetrachloro-dibenzo-*p*-dioxin	GC/MS	613, 625.1 [5], 1613B[9]			SGS AXYS 16130 [14], PAM 16130-SSI [15]
97. 1,1,2,2-Tetrachloroethane	GC	601	6200 C-2020		See footnote [3] p. 130
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12]
98. Tetrachloroethene	GC	601	6200 C-2020		See footnote [3] p. 130
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
99. Toluene	GC	602	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
100. 1,2,4-Trichlorobenzene	GC	612			See footnote [3] p. 130
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27, O-4127-96 [12], O-4436-16 [13]
101. 1,1,1-Trichloroethane	GC	601	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
102. 1,1,2-Trichloroethane	GC	601	6200 C-2020		See footnote [3] p. 130

Parameter [1]	Method	EPA [2, 7]	Standard Methods [16]	ASTM	Other
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
103. Trichloroethene	GC	601	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
104. Trichlorofluoromethane	GC	601	6200 C-2020		
	GC/MS	624.1	6200 B-2020		O-4127-96 [12]
105. 2,4,6-Trichlorophenol	GC	604	6420 B-2021		
	GC/MS	625.1, 1625B	6410 B-2020		See footnote [8] p. 27
106. Vinyl chloride	GC	601	6200 C-2020		
	GC/MS	624.1, 1624B	6200 B-2020		O-4127-96 [12], O-4436-16 [13]
107. Nonylphenol	GC/MS			D7065-17	
108. Bisphenol A (BPA)	GC/MS			D7065-17	
109. *p-tert*-Octylphenol (OP)	GC/MS			D7065-17	

Parameter [1]	Method	EPA [2,7]	Standard Methods [16]	ASTM	Other
110. Nonylphenol Monoethoxylate (NP1EO)	GC/MS			D7065-17	
111. Nonylphenol Diethoxylate (NP2EO)	GC/MS			D7065-17	
112. Adsorbable Organic Halides (AOX)	Adsorption and Coulometric Titration	1650 [10]			
113. Chlorinated Phenolics	In Situ Acetylation and GC/MS	1653 [10]			
114. Adsorbable Organic Fluorine (AOF)	Adsorption and Combustion Ion Chromato-graphy (CIC)	1621 [17]			

Table IC notes:

[1] All parameters are expressed in micrograms per liter (µg/L) except for Method 1613B, in which the parameters are expressed in picograms per liter (pg/L).

[2] The full text of Methods 601-613, 1613B, 1624B, and 1625B are provided at appendix A, Test Procedures for Analysis of Organic Pollutants. The standardized test procedure to be used to determine

the method detection limit (MDL) for these test procedures is given at appendix B of this part, Definition and Procedure for the Determination of the Method Detection Limit. These methods are available at: https://www.epa.gov/cwa-methods as individual PDF files.

[4] Method 624.1 may be used for quantitative determination of acrolein and acrylonitrile, provided that the laboratory has documentation to substantiate the ability to detect and quantify these analytes at levels necessary to comply with any associated regulations. In addition, the use of sample introduction techniques other than simple purge-and-trap may be required. QC acceptance criteria from Method 603 should be used when analyzing samples for acrolein and acrylonitrile in the absence of such criteria in Method 624.1.

[5] Method 625.1 may be extended to include benzidine, hexachlorocyclopentadiene, N-nitrosodimethylamine, N-nitrosodi-n-propylamine, and N-nitrosodiphenylamine. However, when they are known to be present, Methods 605, 607, and 612, or Method 1625B, are preferred methods for these compounds. Method 625.1 may be applied to 2,3,7,8-Tetrachloro-dibenzo-p-dioxin for screening purposes only.

[6] Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency, Supplement to the 15th Edition of Standard Methods for the Examination of Water and Wastewater. 1981. American Public Health Association (APHA).

[7] Each analyst must make an initial, one-time demonstration of their ability to generate acceptable precision and accuracy with Methods 601-603, 1624B, and 1625B in accordance with procedures in Section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis must spike and analyze 10% (5% for Methods 624.1 and 625.1 and 100% for methods 1624B and 1625B) of all samples to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the quality control (QC) acceptance criteria in the pertinent method, analytical results for that parameter in the unspiked sample are suspect. The results should be reported but cannot be used to demonstrate regulatory compliance. If the method does not contain QC acceptance criteria, control limits of ± three standard deviations around the mean of a minimum of five replicate measurements must be used. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other methods cited.

[8] Method O-3116-87 is in Open File Report 93-125, Methods of Analysis by U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments. 1993. USGS.

[9] Analysts may use Fluid Management Systems, Inc. Power-Prep system in place of manual cleanup provided the analyst meets the requirements of Method 1613B (as specified in Section 9 of the method) and permitting authorities. Method 1613, Revision B, Tetra- through Octa-Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS. Revision B, 1994. U.S. EPA. The full text of this method is provided in appendix A to this part and at https://www.epa.gov/cwa-methods/approved-cwa-test-methods-organic-compounds.

[10] Method 1650, Adsorbable Organic Halides by Adsorption and Coulometric Titration. Revision C, 1997 U.S. EPA. Method 1653, Chlorinated Phenolics in Wastewater by In Situ Acetylation and GCMS. Revision A, 1997 U.S. EPA. The full text for both of these methods is provided at appendix A in part 430 of this chapter, The Pulp, Paper, and Paperboard Point Source Category.

[11] The compound was formerly inaccurately labeled as 2,2'-oxybis(2-chloropropane) and bis(2-chloroisopropyl) ether. Some versions of Methods 611, and 1625 inaccurately list the analyte as "bis(2-chloroisopropyl) ether," but use the correct CAS number of 108-60-1.

[12] Method O-4127-96, U.S. Geological Survey Open-File Report 97-829, Methods of analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of 86 volatile organic compounds in water by gas chromatography/mass spectrometry, including detections less than reporting limits,1998, USGS.

[13] Method O-4436-16 U.S. Geological Survey Techniques and Methods, book 5, chap. B12, Determination of heat purgeable and ambient purgeable volatile organic compounds in water by gas chromatography/mass spectrometry, 2016, USGS.

[14] SGS AXYS Method 16130, "Determination of 2,3,7,8-Substituted Tetra- through Octa-Chlorinated Dibenzo-*p*-Dioxins and Dibenzofurans (CDDs/CDFs) Using Waters and Agilent Gas Chromatography-Tandem-Mass Spectrometry (GC/MS/MS), Revision 1.0" is available at: https://www.sgsaxys.com/wp-content/uploads/2022/09/SGS-AXYS-Method-16130-Rev-1.0.pdf.

[15] Pace Analytical Method PAM-16130-SSI, "Determination of 2,3,7,8-Substituted Tetra- through Octa-Chlorinated Dibenzo-*p*-Dioxins and Dibenzofurans (CDDs/CDFs) Using Shimadzu Gas Chromatography Mass Spectrometry (GC-MS/MS), Revision 1.1," is available at: pacelabs.com.

[16] Please refer to the following applicable Quality Control Section: Part 6000 Individual Organic Compounds, 6020 (2019). The Quality Control Standards are available for download at standardmethods.org at no charge.

[17] Method 1621, Determination of Adsorbable Organic Fluorine (AOF) in Aqueous Matrices by

Combustion Ion Chromatography (CIC), January 2024. Available at: https://www.epa.gov/cwa-methods

TABLE Id–LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES[1]

Parameter	Method	EPA[2,7,10]	Standard Methods[15]	ASTM	Other
*	*	*	* *	*	*
53. Parathion ethyl	GC	614	6630 B-2021		See footnote [4], page 27; See footnote [3], p. 25.
	GC/MS	625.1			See footnote [11], O-1126-95.
*	*	*	* *	*	*

Table Id notes:

[1] Pesticides are listed in this table by common name for the convenience of the reader. Additional pesticides may be found under Table Ic of this section, where entries are listed by chemical name.

[2] The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, Definition and Procedure for the Determination of the Method Detection Limit, of this part.

[3] Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater. September 1978. U.S. EPA. This EPA publication includes thin-layer chromatography (TLC) methods.

[4] Methods for the Determination of Organic Substances in Water and Fluvial Sediments, Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A3. 1987. USGS.

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[7] Each analyst must make an initial, one-time, demonstration of their ability to generate acceptable precision and accuracy with Methods 608.3 and 625.1 in accordance with procedures given in Section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis, must spike and analyze 10% of all samples analyzed with Method 608.3 or 5% of all samples analyzed with Method 625.1 to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect. The results should be reported, but cannot be used to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other methods cited.

* * * * *

[10] EPA Methods 608.1, 608.2, 614, 614.1, 615, 617, 619, 622, 622.1, 627, and 632 are found in Methods

for the Determination of Nonconventional Pesticides in Municipal and Industrial Wastewater, EPA 821-R-92-002, April 1992, U.S. EPA. EPA Methods 505, 507, 508, 525.1, 531.1 and 553 are in Methods for the Determination of Nonconventional Pesticides in Municipal and Industrial Wastewater, Volume II, EPA 821-R-93-010B, 1993, U.S. EPA. EPA Method 525.2 is in Determination of Organic Compounds in Drinking Water by Liquid-Solid Extraction and Capillary Column Gas Chromatography/Mass Spectrometry, Revision 2.0, 1995, U.S. EPA. EPA methods 1656 and 1657 are in Methods for The Determination of Nonconventional Pesticides In Municipal and Industrial Wastewater, Volume I, EPA 821-R-93-010A, 1993, U.S. EPA. Methods 608.3 and 625.1 are available at: cwa-methods/approved-cwa-test-methods-organic-compounds.

[11] Method O-1126-95 is in Open-File Report 95-181, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of pesticides in water by C-18 solid-phase extraction and capillary-column gas chromatography/mass spectrometry with selected-ion monitoring. 1995. USGS.

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[15] Please refer to the following applicable Quality Control Section: Part 6000 Methods, Individual Organic Compounds 6020 (2019). These Quality Control Standards are available for download at www.standardmethods.org at no charge.

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TABLE Ii–LIST OF APPROVED TEST PROCEDURES FOR POLYCHLORINATED BIPHENYL (PCB) CONGENERS

Parameter[1]	Congener Number[2]	Methodology	EPA	Standard Methods	ASTM	Other
1. 2-Monochlorobiphenyl	PCB-1	GC/MS	1628			
2. 3-Monochlorobiphenyl	PCB-2	GC/MS	1628			
3. 4-Monochlorobiphenyl	PCB-3	GC/MS	1628			
4. 2,2'-Dichlorobiphenyl	PCB-4	GC/MS	1628			
5. 2,3-Dichlorobiphenyl	PCB-5	GC/MS	1628			
6. 2,3'-Dichlorobiphenyl	PCB-6	GC/MS	1628			
7. 2,4-Dichlorobiphenyl	PCB-7	GC/MS	1628			
8. 2,4'-Dichlorobiphenyl	PCB-8	GC/MS	1628			
9. 2,5-Dichlorobiphenyl	PCB-9	GC/MS	1628			
10. 2,6-Dichlorobiphenyl	PCB-10	GC/MS	1628			
11. 3,3'-Dichlorobiphenyl	PCB-11	GC/MS	1628			
12. 3,4-Dichlorobiphenyl	PCB-12	GC/MS	1628			
13. 3,4'-Dichlorobiphenyl	PCB-13	GC/MS	1628			
14. 3,5-Dichlorobiphenyl	PCB-14	GC/MS	1628			
15. 4,4'-Dichlorobiphenyl	PCB-15	GC/MS	1628			
16. 2,2',3-Trichlorobiphenyl	PCB-16	GC/MS	1628			
17. 2,2',4-Trichlorobiphenyl	PCB-17	GC/MS	1628			
18. 2,2',5-Trichlorobiphenyl	PCB-18	GC/MS	1628			
19. 2,2',6-Trichlorobiphenyl	PCB-19	GC/MS	1628			
20. 2,3,3'-Trichlorobiphenyl	PCB-20	GC/MS	1628			
21. 2,3,4-Trichlorobiphenyl	PCB-21	GC/MS	1628			
22. 2,3,4'-Trichlorobiphenyl	PCB-22	GC/MS	1628			

Parameter[1]	Congener Number[2]	Methodology	EPA	Standard Methods	ASTM	Other
23. 2,3,5-Trichlorobiphenyl	PCB-23	GC/MS	1628			
24. 2,3,6-Trichlorobiphenyl	PCB-24	GC/MS	1628			
25. 2,3',4-Trichlorobiphenyl	PCB-25	GC/MS	1628			
26. 2,3',5-Trichlorobiphenyl	PCB-26	GC/MS	1628			
27. 2,3',6-Trichlorobiphenyl	PCB-27	GC/MS	1628			
28. 2,4,4'-Trichlorobiphenyl	PCB-28	GC/MS	1628			
29. 2,4,5-Trichlorobiphenyl	PCB-29	GC/MS	1628			
30. 2,4,6-Trichlorobiphenyl	PCB-30	GC/MS	1628			
31. 2,4',5-Trichlorobiphenyl	PCB-31	GC/MS	1628			
32. 2,4',6-Trichlorobiphenyl	PCB-32	GC/MS	1628			
33. 2',3,4-Trichlorobiphenyl	PCB-33	GC/MS	1628			
34. 2',3,5-Trichlorobiphenyl	PCB-34	GC/MS	1628			
35. 3,3',4-Trichlorobiphenyl	PCB-35	GC/MS	1628			
36. 3,3',5-Trichlorobiphenyl	PCB-36	GC/MS	1628			
37. 3,4,4'-Trichlorobiphenyl	PCB-37	GC/MS	1628			
38. 3,4,5-Trichlorobiphenyl	PCB-38	GC/MS	1628			
39. 3,4',5-Trichlorobiphenyl	PCB-39	GC/MS	1628			
40. 2,2',3,3'-Tetrachlorobiphenyl	PCB-40	GC/MS	1628			
41. 2,2',3,4-Tetrachlorobiphenyl	PCB-41	GC/MS	1628			
42. 2,2',3,4'-Tetrachlorobiphenyl	PCB-42	GC/MS	1628			
43. 2,2',3,5-Tetrachlorobiphenyl	PCB-43	GC/MS	1628			
44. 2,2',3,5'-Tetrachlorobiphenyl	PCB-44	GC/MS	1628			
45. 2,2',3,6-Tetrachlorobiphenyl	PCB-45	GC/MS	1628			
46. 2,2',3,6'-Tetrachlorobiphenyl	PCB-46	GC/MS	1628			
47. 2,2',4,4'-Tetrachlorobiphenyl	PCB-47	GC/MS	1628			
48. 2,2',4,5-Tetrachlorobiphenyl	PCB-48	GC/MS	1628			
49. 2,2',4,5'-Tetrachlorobiphenyl	PCB-49	GC/MS	1628			
50. 2,2',4,6-Tetrachlorobiphenyl	PCB-50	GC/MS	1628			
51. 2,2',4,6'-Tetrachlorobiphenyl	PCB-51	GC/MS	1628			
52. 2,2',5,5'-Tetrachlorobiphenyl	PCB-52	GC/MS	1628			
53. 2,2',5,6'-Tetrachlorobiphenyl	PCB-53	GC/MS	1628			
54. 2,2',6,6'-Tetrachlorobiphenyl	PCB-54	GC/MS	1628			
55. 2,3,3',4-Tetrachlorobiphenyl	PCB-55	GC/MS	1628			
56. 2,3,3',4'-Tetrachlorobiphenyl	PCB-56	GC/MS	1628			
57. 2,3,3',5-Tetrachlorobiphenyl	PCB-57	GC/MS	1628			
58. 2,3,3',5'-Tetrachlorobiphenyl	PCB-58	GC/MS	1628			
59. 2,3,3',6-Tetrachlorobiphenyl	PCB-59	GC/MS	1628			
60. 2,3,4,4'-Tetrachlorobiphenyl	PCB-60	GC/MS	1628			
61. 2,3,4,5-Tetrachlorobiphenyl	PCB-61	GC/MS	1628			
62. 2,3,4,6-Tetrachlorobiphenyl	PCB-62	GC/MS	1628			
63. 2,3,4',5-Tetrachlorobiphenyl	PCB-63	GC/MS	1628			
64. 2,3,4',6-Tetrachlorobiphenyl	PCB-64	GC/MS	1628			
65. 2,3,5,6-Tetrachlorobiphenyl	PCB-65	GC/MS	1628			
66. 2,3',4,4'-Tetrachlorobiphenyl	PCB-66	GC/MS	1628			
67. 2,3',4,5-Tetrachlorobiphenyl	PCB-67	GC/MS	1628			
68. 2,3',4,5'-Tetrachlorobiphenyl	PCB-68	GC/MS	1628			
69. 2,3',4,6-Tetrachlorobiphenyl	PCB-69	GC/MS	1628			
70. 2,3',4',5-Tetrachlorobiphenyl	PCB-70	GC/MS	1628			
71. 2,3',4',6-Tetrachlorobiphenyl	PCB-71	GC/MS	1628			
72. 2,3',5,5'-Tetrachlorobiphenyl	PCB-72	GC/MS	1628			
73. 2,3',5',6-Tetrachlorobiphenyl	PCB-73	GC/MS	1628			
74. 2,4,4',5-Tetrachlorobiphenyl	PCB-74	GC/MS	1628			
75. 2,4,4',6-Tetrachlorobiphenyl	PCB-75	GC/MS	1628			
76. 2',3,4,5-Tetrachlorobiphenyl	PCB-76	GC/MS	1628			
77. 3,3',4,4'-Tetrachlorobiphenyl	PCB-77	GC/MS	1628			
78. 3,3',4,5-Tetrachlorobiphenyl	PCB-78	GC/MS	1628			
79. 3,3',4,5'-Tetrachlorobiphenyl	PCB-79	GC/MS	1628			
80. 3,3',5,5'-Tetrachlorobiphenyl	PCB-80	GC/MS	1628			
81. 3,4,4',5-Tetrachlorobiphenyl	PCB-81	GC/MS	1628			
82. 2,2',3,3',4-Pentachlorobiphenyl	PCB-82	GC/MS	1628			
83. 2,2',3,3',5-Pentachlorobiphenyl	PCB-83	GC/MS	1628			
84. 2,2',3,3',6-Pentachlorobiphenyl	PCB-84	GC/MS	1628			
85. 2,2',3,4,4'-Pentachlorobiphenyl	PCB-85	GC/MS	1628			

Parameter[1]	Congener Number[2]	Methodology	EPA	Standard Methods	ASTM	Other
86. 2,2',3,4,5-Pentachlorobiphenyl	PCB-86	GC/MS	1628			
87. 2,2',3,4,5'-Pentachlorobiphenyl	PCB-87	GC/MS	1628			
88. 2,2',3,4,6-Pentachlorobiphenyl	PCB-88	GC/MS	1628			
89. 2,2',3,4,6'-Pentachlorobiphenyl	PCB-89	GC/MS	1628			
90. 2,2',3,4',5-Pentachlorobiphenyl	PCB-90	GC/MS	1628			
91. 2,2',3,4',6-Pentachlorobiphenyl	PCB-91	GC/MS	1628			
92. 2,2',3,5,5'-Pentachlorobiphenyl	PCB-92	GC/MS	1628			
93. 2,2',3,5,6-Pentachlorobiphenyl	PCB-93	GC/MS	1628			
94. 2,2',3,5,6'-Pentachlorobiphenyl	PCB-94	GC/MS	1628			
95. 2,2',3,5',6-Pentachlorobiphenyl	PCB-95	GC/MS	1628			
96. 2,2',3,6,6'-Pentachlorobiphenyl	PCB-96	GC/MS	1628			
97. 2,2',3',4,5-Pentachlorobiphenyl	PCB-97	GC/MS	1628			
98. 2,2',3',4,6-Pentachlorobiphenyl	PCB-98	GC/MS	1628			
99. 2,2',4,4',5-Pentachlorobiphenyl	PCB-99	GC/MS	1628			
100. 2,2',4,4',6-Pentachlorobiphenyl	PCB-100	GC/MS	1628			
101. 2,2',4,5,5'-Pentachlorobiphenyl	PCB-101	GC/MS	1628			
102. 2,2',4,5,6'-Pentachlorobiphenyl	PCB-102	GC/MS	1628			
103. 2,2',4,5,'6-Pentachlorobiphenyl	PCB-103	GC/MS	1628			
104. 2,2',4,6,6'-Pentachlorobiphenyl	PCB-104	GC/MS	1628			
105. 2,3,3',4,4'-Pentachlorobiphenyl	PCB-105	GC/MS	1628			
106. 2,3,3',4,5-Pentachlorobiphenyl	PCB-106	GC/MS	1628			
107. 2,3,3',4',5-Pentachlorobiphenyl	PCB-107	GC/MS	1628			
108. 2,3,3',4,5'-Pentachlorobiphenyl	PCB-108	GC/MS	1628			
109. 2,3,3',4,6-Pentachlorobiphenyl	PCB-109	GC/MS	1628			
110. 2,3,3',4',6-Pentachlorobiphenyl	PCB-110	GC/MS	1628			
111. 2,3,3',5,5'-Pentachlorobiphenyl	PCB-111	GC/MS	1628			
112. 2,3,3',5,6-Pentachlorobiphenyl	PCB-112	GC/MS	1628			
113. 2,3,3',5',6-Pentachlorobiphenyl	PCB-113	GC/MS	1628			
114. 2,3,4,4',5-Pentachlorobiphenyl	PCB-114	GC/MS	1628			
115. 2,3,4,4',6-Pentachlorobiphenyl	PCB-115	GC/MS	1628			
116. 2,3,4,5,6-Pentachlorobiphenyl	PCB-116	GC/MS	1628			
117. 2,3,4',5,6-Pentachlorobiphenyl	PCB-117	GC/MS	1628			
118. 2,3',4,4',5-Pentachlorobiphenyl	PCB-118	GC/MS	1628			
119. 2,3',4,4',6-Pentachlorobiphenyl	PCB-119	GC/MS	1628			
120. 2,3',4,5,5'-Pentachlorobiphenyl	PCB-120	GC/MS	1628			
121. 2,3',4,5,'6-Pentachlorobiphenyl	PCB-121	GC/MS	1628			
122. 2',3,3',4,5-Pentachlorobiphenyl	PCB-122	GC/MS	1628			
123. 2',3,4,4',5-Pentachlorobiphenyl	PCB-123	GC/MS	1628			
124. 2',3,4,5,5'-Pentachlorobiphenyl	PCB-124	GC/MS	1628			
125. 2',3,4,5,6'-Pentachlorobiphenyl	PCB-125	GC/MS	1628			
126. 3,3',4,4',5-Pentachlorobiphenyl	PCB-126	GC/MS	1628			
127. 3,3',4,5,5'-Pentachlorobiphenyl	PCB-127	GC/MS	1628			
128. 2,2',3,3',4,4'-Hexachlorobiphenyl	PCB-128	GC/MS	1628			
129. 2,2',3,3',4,5-Hexachlorobiphenyl	PCB-129	GC/MS	1628			
130. 2,2',3,3',4,5'-Hexachlorobiphenyl	PCB-130	GC/MS	1628			
131. 2,2',3,3',4,6-Hexachlorobiphenyl	PCB-131	GC/MS	1628			
132. 2,2',3,3',4,6'-Hexachlorobiphenyl	PCB-132	GC/MS	1628			
133. 2,2',3,3',5,5'-Hexachlorobiphenyl	PCB-133	GC/MS	1628			
134. 2,2',3,3',5,6-Hexachlorobiphenyl	PCB-134	GC/MS	1628			
135. 2,2',3,3',5,6'-Hexachlorobiphenyl	PCB-135	GC/MS	1628			
136. 2,2',3,3',6,6'-Hexachlorobiphenyl	PCB-136	GC/MS	1628			
137. 2,2',3,4,4',5-Hexachlorobiphenyl	PCB-137	GC/MS	1628			
138. 2,2',3,4,4',5'-Hexachlorobiphenyl	PCB-138	GC/MS	1628			
139. 2,2',3,4,4',6-Hexachlorobiphenyl	PCB-139	GC/MS	1628			
140. 2,2',3,4,4',6'-Hexachlorobiphenyl	PCB-140	GC/MS	1628			
141. 2,2',3,4,5,5'-Hexachlorobiphenyl	PCB-141	GC/MS	1628			
142. 2,2',3,4,5,6-Hexachlorobiphenyl	PCB-142	GC/MS	1628			
143. 2,2',3,4,5,6'-Hexachlorobiphenyl	PCB-143	GC/MS	1628			
144. 2,2',3,4,5',6-Hexachlorobiphenyl	PCB-144	GC/MS	1628			
145. 2,2',3,4,6,6'-Hexachlorobiphenyl	PCB-145	GC/MS	1628			
146. 2,2',3,4',5,5'-Hexachlorobiphenyl	PCB-146	GC/MS	1628			
147. 2,2',3,4',5,6-Hexachlorobiphenyl	PCB-147	GC/MS	1628			
148. 2,2',3,4',5,6'-Hexachlorobiphenyl	PCB-148	GC/MS	1628			

Parameter[1]	Congener Number[2]	Methodology	EPA	Standard Methods	ASTM	Other
149. 2,2',3,4',5',6-Hexachlorobiphenyl	PCB-149	GC/MS	1628			
150. 2,2',3,4',6,6'-Hexachlorobiphenyl	PCB-150	GC/MS	1628			
151. 2,2',3,5,5',6-Hexachlorobiphenyl	PCB-151	GC/MS	1628			
152. 2,2',3,5,6,6'-Hexachlorobiphenyl	PCB-152	GC/MS	1628			
153. 2,2',4,4',5,5'-Hexachlorobiphenyl	PCB-153	GC/MS	1628			
154. 2,2',4,4',5,6'-Hexachlorobiphenyl	PCB-154	GC/MS	1628			
155. 2,2',4,4',6,6'-Hexachlorobiphenyl	PCB-155	GC/MS	1628			
156. 2,3,3',4,4',5-Hexachlorobiphenyl	PCB-156	GC/MS	1628			
157. 2,3,3',4,4',5'-Hexachlorobiphenyl	PCB-157	GC/MS	1628			
158. 2,3,3',4,4',6-Hexachlorobiphenyl	PCB-158	GC/MS	1628			
159. 2,3,3',4,5,5'-Hexachlorobiphenyl	PCB-159	GC/MS	1628			
160. 2,3,3',4,5,6-Hexachlorobiphenyl	PCB-160	GC/MS	1628			
161. 2,3,3',4,5',6-Hexachlorobiphenyl	PCB-161	GC/MS	1628			
162. 2,3,3',4',5,5'-Hexachlorobiphenyl	PCB-162	GC/MS	1628			
163. 2,3,3',4',5,6-Hexachlorobiphenyl	PCB-163	GC/MS	1628			
164. 2,3,3',4',5',6-Hexachlorobiphenyl	PCB-164	GC/MS	1628			
165. 2,3,3',5,5',6-Hexachlorobiphenyl	PCB-165	GC/MS	1628			
166. 2,3,4,4',5,6-Hexachlorobiphenyl	PCB-166	GC/MS	1628			
167. 2,3',4,4',5,5'-Hexachlorobiphenyl	PCB-167	GC/MS	1628			
168. 2,3',4,4',5',6-Hexachlorobiphenyl	PCB-168	GC/MS	1628			
169. 3,3',4,4',5,5'-Hexachlorobiphenyl	PCB-169	GC/MS	1628			
170. 2,2',3,3',4,4',5-Heptachlorobiphenyl	PCB-170	GC/MS	1628			
171. 2,2'3,3',4,4',6-Heptachlorobiphenyl	PCB-171	GC/MS	1628			
172. 2,2',3,3',4,5,5'-Heptachlorobiphenyl	PCB-172	GC/MS	1628			
173. 2,2',3,3',4,5,6-Heptachlorobiphenyl	PCB-173	GC/MS	1628			
174. 2,2',3,3',4,5,6'-Heptachlorobiphenyl	PCB-174	GC/MS	1628			
175. 2,2',3,3',4,5',6-Heptachlorobiphenyl	PCB-175	GC/MS	1628			
176. 2,2',3,3',4,6,6'-Heptachlorobiphenyl	PCB-176	GC/MS	1628			
177. 2,2',3,3',4',5,6-Heptachlorobiphenyl	PCB-177	GC/MS	1628			
178. 2,2',3,3',5,5',6-Heptachlorobiphenyl	PCB-178	GC/MS	1628			
179. 2,2',3,3',5,6,6'-Heptachlorobiphenyl	PCB-179	GC/MS	1628			
180. 2,2',3,4,4',5,5'-Heptachlorobiphenyl	PCB-180	GC/MS	1628			
181. 2,2',3,4,4',5,6-Heptachlorobiphenyl	PCB-181	GC/MS	1628			
182. 2,2',3,4,4',5,6'-Heptachlorobiphenyl	PCB-182	GC/MS	1628			
183. 2,2',3,4,4',5',6-Heptachlorobiphenyl	PCB-183	GC/MS	1628			
184. 2,2',3,4,4',6,6'-Heptachlorobiphenyl	PCB-184	GC/MS	1628			
185. 2,2',3,4,5,5',6-Heptachlorobiphenyl	PCB-185	GC/MS	1628			
186. 2,2',3,4,5,6,6'-Heptachlorobiphenyl	PCB-186	GC/MS	1628			
187. 2,2',3,4',5,5',6-Heptachlorobiphenyl	PCB-187	GC/MS	1628			
188. 2,2',3,4',5,6,6'-Heptachlorobiphenyl	PCB-188	GC/MS	1628			
189. 2,3,3',4,4',5,5'-Heptachlorobiphenyl	PCB-189	GC/MS	1628			
190. 2,3,3',4,4',5,6-Heptachlorobiphenyl	PCB-190	GC/MS	1628			
191. 2,3,3',4,4',5',6-Heptachlorobiphenyl	PCB-191	GC/MS	1628			
192. 2,3,3',4,5,5',6-Heptachlorobiphenyl	PCB-192	GC/MS	1628			
193. 2,3,3',4',5,5',6-Heptachlorobiphenyl	PCB-193	GC/MS	1628			
194. 2,2',3,3',4,4',5,5'-Octachlorobiphenyl	PCB-194	GC/MS	1628			
195. 2,2',3,3',4,4',5,6-Octachlorobiphenyl	PCB-195	GC/MS	1628			
196. 2,2',3,3',4,4',5,6'-Octachlorobiphenyl	PCB-196	GC/MS	1628			
197. 2,2',3,3',4,4',6,6'-Octachlorobiphenyl	PCB-197	GC/MS	1628			
198. 2,2',3,3',4,5,5',6-Octachlorobiphenyl	PCB-198	GC/MS	1628			
199. 2,2',3,3',4,5,5',6'-Octachlorobiphenyl	PCB-199	GC/MS	1628			
200. 2,2',3,3',4,5,6,6'-Octachlorobiphenyl	PCB-200	GC/MS	1628			
201. 2,2',3,3',4,5',6,6'-Octachlorobiphenyl	PCB-201	GC/MS	1628			
202. 2,2',3,3',5,5',6,6'-Octachlorobiphenyl	PCB-202	GC/MS	1628			
203. 2,2',3,4,4',5,5',6-Octachlorobiphenyl	PCB-203	GC/MS	1628			
204. 2,2',3,4,4',5,6,6'-Octachlorobiphenyl	PCB-204	GC/MS	1628			
205. 2,3,3',4,4',5,5',6-Octachlorobiphenyl	PCB-205	GC/MS	1628			
206. 2,2',3,3',4,4',5,5',6-Nonachlorobiphenyl	PCB-206	GC/MS	1628			
207. 2,2',3,3',4,4',5,6,6'-Nonachlorobiphenyl	PCB-207	GC/MS	1628			
208. 2,2',3,3',4,5,5',6,6'-Nonachlorobiphenyl	PCB-208	GC/MS	1628			
209. Decachlorobiphenyl	PCB-209	GC/MS	1628			
210. Total PCBs[3]	Total PCBs	GC/MS	1628			

Table Ii notes:

[1] EPA Substance Registry Services name (https://cdxapps.epa.gov/oms-substance-registry-services/)

[2] Preferred abbreviation to facilitate consistency in reporting of the results for these parameters.

[3] Total PCBs is the sum of all the detected congeners in the sample. Calculate the total PCB concentration by using zero (0) for the contribution of the congeners that are not detected. Otherwise, every method blank will have a non-zero result, even when no congeners are detected, affecting assessments of the sample results relative to the method blank. Further, there is no method detection limit (MDL) for Total PCBs because it is the sum of the results for many individual parameters. Method blanks and samples with no detects are reported as "ND" for non-detect for the Total PCBs result (or a similarly appropriate non-numeric value).

TABLE Ij–LIST OF APPROVED TEST PROCEDURES FOR PER- AND POLYFLUORINATED ALKYL SUBSTANCES (PFAS)

Parameter[1]	Abbreviation[2]	Methodology	EPA	Standard Methods	ASTM[3]	Other
1. Perfluorobutanoic acid	PFBA	LC-MS/MS	1633A		D8421-24	
2. Perfluoropentanoic acid	PFPeA	LC-MS/MS	1633A		D8421-24	
3. Perfluorohexanoic acid	PFHxA	LC-MS/MS	1633A		D8421-24	
4. Perfluoroheptanoic acid	PFHpA	LC-MS/MS	1633A		D8421-24	
5. Perfluorooctanoic acid	PFOA	LC-MS/MS	1633A		D8421-24	
6. Perfluorononanoic acid	PFNA	LC-MS/MS	1633A		D8421-24	
7. Perfluorodecanoic acid	PFDA	LC-MS/MS	1633A		D8421-24	
8. Perfluoroundecanoic acid	PFUnA	LC-MS/MS	1633A		D8421-24	
9. Perfluorododecanoic acid	PFDoA	LC-MS/MS	1633A		D8421-24	
10. Perfluorotridecanoic acid	PFTrDA	LC-MS/MS	1633A		D8421-24	
11. Perfluorotetradecanoic acid	PFTeDA	LC-MS/MS	1633A		D8421-24	
12. Perfluorobutanesulfonic acid	PFBS	LC-MS/MS	1633A		D8421-24	
13. Perfluoropentanesulfonic acid	PFPeS	LC-MS/MS	1633A		D8421-24	
14. Perfluorohexanesulfonic acid	PFHxS	LC-MS/MS	1633A		D8421-24	
15. Perfluoroheptanesulfonic acid	PFHpS	LC-MS/MS	1633A		D8421-24	
16. Perfluorooctanesulfonic acid	PFOS	LC-MS/MS	1633A		D8421-24	
17. Perfluorononanesulfonic acid	PFNS	LC-MS/MS	1633A		D8421-24	
18. Perfluorodecanesulfonic acid	PFDS	LC-MS/MS	1633A		D8421-24	
19. Perfluorododecanesulfonic acid	PFDoS	LC-MS/MS	1633A		D8421-24	
20. 1H,1H,2H,2H-Perfluorohexane sulfonic acid	4:2FTS	LC-MS/MS	1633A		D8421-24	
21. 1H,1H,2H,2H-Perfluorooctane sulfonic acid	6:2FTS	LC-MS/MS	1633A		D8421-24	
22. 1H,1H,2H,2H-Perfluorodecane sulfonic acid	8:2FTS	LC-MS/MS	1633A		D8421-24	
23. Perfluorooctanesulfonamide	PFOSA	LC-MS/MS	1633A		D8421-24	
24. N-methyl perfluorooctanesulfonamide	NMeFOSA	LC-MS/MS	1633A		D8421-24	
25. N-ethyl perfluorooctanesulfonamide	NEtFOSA	LC-MS/MS	1633A		D8421-24	
26. N-methyl perfluorooctanesulfonamido-acetic acid	NMeFOSAA	LC-MS/MS	1633A		D8421-24	
27. N-ethyl perfluorooctanesulfonamido-acetic acid	NEtFOSAA	LC-MS/MS	1633A		D8421-24	
28. N-methyl perfluorooctanesulfonamidoethanol	NMeFOSE	LC-MS/MS	1633A		D8421-24	
29. N-ethyl perfluorooctanesulfonamido-ethanol	NEtFOSE	LC-MS/MS	1633A		D8421-24	

Parameter[1]	Abbreviation[2]	Methodology	EPA	Standard Methods	ASTM[3]	Other
30. Hexafluoropropylene oxide dimer acid	HFPO-DA	LC-MS/MS	1633A		D8421-24	
31. 4,8-Dioxa-3H-perfluorononanoic acid	ADONA	LC-MS/MS	1633A		D8421-24	
32. Perfluoro-3-methoxypropanoic acid	PFMPA	LC-MS/MS	1633A		D8421-24	
33. Perfluoro-4-methoxybutanoic acid	PFMBA	LC-MS/MS	1633A		D8421-24	
34. Nonafluoro-3,6-dioxaheptanoic acid	NFDHA	LC-MS/MS	1633A		D8421-24	
35. 9-Chlorohexadecafluoro-3-oxanonane-1-sulfonic acid	9Cl-PF3ONS	LC-MS/MS	1633A		D8421-24	
36. 11-Chloroeicosafluoro-3-oxaundecane-1-sulfonic acid	11Cl-PF3OUdS	LC-MS/MS	1633A		D8421-24	
37. Perfluoro(2-ethoxyethane)sulfonic acid	PFEESA	LC-MS/MS	1633A		D8421-24	
38. 3-Perfluoropropyl propanoic acid	3:3FTCA	LC-MS/MS	1633A		D8421-24	
39. 2H,2H,3H,3H-Perfluorooctanoic acid	5:3FTCA	LC-MS/MS	1633A		D8421-24	
40. 3-Perfluoroheptyl propanoic acid	7:3FTCA	LC-MS/MS	1633A		D8421-24	

Table Ij notes:

[1] EPA Substance Registry Services name (https://cdxapps.epa.gov/oms-substance-registry-services/)

[2] Preferred Abbreviation from Method 1633 to facilitate consistency in reporting of the results for these parameters.

[3] ASTM D8421-24 is only applicable to aqueous samples.

(b) The material listed in this paragraph (b) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the EPA and at the National Archives and Records Administration (NARA). Contact the EPA at: EPA's Water Docket, EPA West, 1301 Constitution Avenue NW, Room 3334, Washington, DC 20004; phone: 202–566–2426; email: docket-*customerservice@epa.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from the following sources in this paragraph (b).

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(xi) Method 1621, Determination of Adsorbable Organic Fluorine (AOF) in Aqueous Matrices by Combustion Ion Chromatography (CIC). EPA 821–R–24–002. Table Ic.

(xii) Method 1628 Method 1628 Polychlorinated Biphenyl (PCB) Congeners in Water, Soil, Sediment, Biosolids, and Tissue by Low-resolution GC/MS using Selected Ion Monitoring. July 2021. EPA 821–R–21–002. Table Ii.

(xiii) Method 1633A Analysis of Per- and Polyfluoroalkyl Substances (PFAS) in Aqueous, Solid, Biosolids, and Tissue Samples by LC–MS/MS. EPA–820–R–24–007. Table Ij.

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(10) American Public Health Association, 800 I Street, NW, Washington, DC 20001; phone: 202–777–2742; website: *www.standardmethods.org.*

(i) Standard Methods for the Examination of Water and Wastewater. 14th Edition, 1975. Table Ib, Notes 27 and 86.

(ii) Standard Methods for the Examination of Water and Wastewater. 15th Edition, 1980, Table Ib, Note 30; Table Id.

(iii) Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency, Supplement to the 15th Edition of Standard Methods for the Examination of Water and Wastewater. 1981. Table Ic, Note 6; Table Id, Note 6.

(iv) Standard Methods for the Examination of Water and Wastewater. 18th Edition, 1992. Tables Ia, Ib, Ic, Id, Ie, and .

(v) Standard Methods for the Examination of Water and Wastewater. 19th Edition, 1995. Tables Ia, Ib, Ic, Id, Ie, and Ih.

(vi) Standard Methods for the Examination of Water and Wastewater. 20th Edition, 1998. Tables Ia, Ib, Ic, Id, Ie, and Ih.

(vii) Standard Methods for the Examination of Water and Wastewater. 21st Edition, 2005. Table Ib, Notes 17 and 27.

(viii) 2120, Color. Revised September 4, 2021. Table Ib.

(ix) 2130, Turbidity. Revised 2020. Table Ib.

(x) 2310, Acidity. Revised 2020. Table Ib.

(xi) 2320, Alkalinity. Revised 2021. Table Ib.

(xii) 2340, Hardness. Revised 2021. Table Ib.

(xiii) 2510, Conductivity. Revised 2021. Table Ib.

(xiv) 2540, Solids. Revised 2020. Table Ib.

(xv) 2550, Temperature. 2010. Table Ib.

(xvi) 3111, Metals by Flame Atomic Absorption Spectrometry. Revised 2019. Table Ib.

(xvii) 3112, Metals by Cold-Vapor Atomic Absorption Spectrometry. Revised 2020. Table Ib.

(xviii) 3113, Metals by Electrothermal Atomic Absorption Spectrometry. Revised 2020. Table Ib.

(xix) 3114, Arsenic and Selenium by Hydride Generation/Atomic Absorption Spectrometry. Revised 2020, Table Ib.

(xx) 3120, Metals by Plasma Emission Spectroscopy. Revised 2020. Table Ib.

(xxi) 3125, Metals by Inductively Coupled Plasma-Mass Spectrometry. Revised 2020. Table Ib.

(xxii) 3500-Ca, Calcium. Revised 2020. Table Ib.

(xxiii) 3500-Cr, Chromium. Revised 2020. Table Ib.

(xxiv) 3500–K, Potassium. Revised 2020. Table Ib.

(xxv) 3500-Na, Sodium. Revised 2020. Table Ib.

(xxvi) 4110, Determination of Anions by Ion Chromatography. Revised 2020. Table Ib.

(xxvii) 4140, Inorganic Anions by Capillary Ion Electrophoresis. Revised 2020. Table Ib.

(xxviii) 4500 Cl^-, Chloride. Revised 2021. Table Ib.

(xxix) 4500-Cl, Chlorine (Residual). 2011. Table Ib.

(xxx) 4500–CN^-, Cyanide. Revised 2021. Table Ib.

(xxxi) 4500–F^-, Fluoride. Revised 2021. Table Ib.

(xxxii) 4500–H^+, pH. 2021. Table Ib.

(xxiii) 4500–H2O2 Hydrogen Peroxide (Residual) 2020. Table Ib.

(xxxiv) 4500–NH_3, Nitrogen (Ammonia). Revised 2021. Table Ib.

(xxxv) 4500–NO_2^-, Nitrogen (Nitrite). Revised 2021. Table Ib.

(xxxvi) 4500–NO_3^-, Nitrogen (Nitrate). Revised 2019. Table Ib.

(xxxvii) 4500–$N_{(org)}$, Nitrogen (Organic). Revised 2021. Table Ib.

(xxxviii) 4500–O, Oxygen (Dissolved). Revised 2021. Table Ib.

(xxxix) 4500–P, Phosphorus. Revised 2021. Table Ib.

(xl) 4500–PAA Peracetic Acid (Residual) 2019. Table Ib.

(xli) 4500-SiO_2, Silica. Revised 2021. Table Ib.

(xlii) 4500–S^{2-}, Sulfide. Revised 2021. Table Ib.

(xliii) 4500–SO_3^{2-}, Sulfite. Revised 2021. Table Ib.

(xliv) 4500–SO_4^{2-}, Sulfate. Revised 2021. Table Ib.

(xlv) 5210, Biochemical Oxygen Demand (BOD). Revised 2016. Table Ib.

(xlvi) 5220, Chemical Oxygen Demand (COD). 2011. Table Ib.

(xlvii) 5310, Total Organic Carbon (TOC). Revised 2014. Table Ib.

(xlviii) 5520, Oil and Grease. Revised 2021. Table Ib.

(xlix) 5530, Phenols. Revised 2021. Table Ib.

(l) 5540, Surfactants. Revised 2021. Table Ib.

(li) 6200, Volatile Organic Compounds. Revised 2020. Table Ic.

(lii) 6410, Extractable Base/Neutrals and Acids. Revised 2020. Tables Ic and Id.

(liii) 6420, Phenols. Revised 2021. Table Ic.

(liv) 6440, Polynuclear Aromatic Hydrocarbons. Revised 2021. Table Ic.

(lv) 6630, Organochlorine Pesticides. Revised 2021. Table Id.

(lvi) 6640, Acidic Herbicide Compounds. Revised 2021. Table Id.

(lvii) 7110, Gross Alpha and Gross Beta Radioactivity (Total, Suspended, and Dissolved). 2000. Table Ie.

(lviii) 7500, Radium. 2001. Table Ie.

(lix) 9213, Recreational Waters. 2007. Table Ih.

(lx) 9221, Multiple-Tube Fermentation Technique for Members of the Coliform Group. Approved 2014. Table Ia, Notes 12, 14; and 33; Table Ih, Notes 10, 12, and 32.

(lxi) 9222, Membrane Filter Technique for Members of the Coliform Group. 2015. Table Ia, Note 31; Table Ih, Note 17.

(lxii) 9223 Enzyme Substrate Coliform Test. 2016. Table Ia; Table Ih.

(lxiii) 9230 Fecal Enterococcus/ Streptococcus Groups. 2013. Table Ia, Note 32; Table Ih.

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(lxxi) ASTM D8421–24, Standard Test Method for Determination of Per- and Polyfluoroalkyl Substances (PFAS) in Aqueous Matrices by Co-solvation followed by Liquid Chromatography Tandem Mass Spectrometry (LC/MS/MS). June 2024. Table Ij.

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(i) Organochlorine Pesticides and PCBs in Wastewater Using EmporeTM Disk Test Method 3M 0222. Revised October 28, 1994. Table Id, Note 8.

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TABLE II—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Parameter number/name	Container [1]	Preservation [2,3]	Maximum holding time [4]
* * * * * * *			
Table Ib—Inorganic Tests			
* * * * * * *			
4. Ammonia	P, FP, G	Cool, ≤6 °C[18], 0.008% $Na_2S_2O_3$ [5], H_2SO_4 to pH <2	28 days
* * * * * * *			
Table Ib Metals[7]			
* * * * * * *			
35. Mercury (CVAFS)	FP,G; and FP-lined cap[17]	5 mL/L 12N HCL or 5mL/L BrCl[17]	90 days. [17]
* * * * * * *			
48. Phenols	G	Cool, ≤6 °C[18], , 0.008% $Na_2S_2O_3$[5], H_2SO_4 to pH <2	28 days.
* * * * * * *			
50. Phosphorus, total	P, FP,G	Cool, ≤6 °C 18, H2SO4 to pH <2 [25]	28 days.
* * * * * * *			
77. Hydrogen Peroxide	P, G	None required	Analyze within 15 minutes.
78. Peracetic Acid	P, G	None required	Analyze within 15 minutes.
* * * * * * *			
Table Ic—Organic Tests [8]			
13, 18-20, 22, 24, 25, 27, 28, 34-37, 39-43, 45-47, 56, 76, 97, 98, 101-104, 106. Purgeable Halocarbons	G, FP-lined septum	Cool, ≤6 °C[18], 0.008% $Na_2S_2O_3$[5], HCl to pH 2[9]	14 days [9]
26. 2-Chloroethylvinyl ether	G, FP-lined septum	Cool, ≤6 °C[18], 0.008% $Na_2S_2O_3$[5]	14 days[9]
6, 57, 99. Purgeable aromatic hydrocarbons	G, FP-lined septum	Cool, ≤6 °C[18], 0.008% $Na_2S_2O_3$[5], HCl to pH 2[9]	14 days [9]
3, 4. Acrolein and acrylonitrile	G, FP-lined septum	Cool, ≤6 °C[18], 0.008% $Na_2S_2O_3$, HCl to pH 2[10]	14 days [10]
23, 30, 44, 49, 53, 77, 80, 81, 91, 93, 105. Phenols [11]	G, FP-lined cap	Cool, ≤6 °C[18], 0.008% $Na_2S_2O_3$[5]	7 days until extraction, 40 days after extraction
7, 38. Benzidines[11 12]	G, FP-lined cap	Cool, ≤6 °C[18], 0.008% $Na_2S_2O_3$[5]	7 days until extraction.[13]
14, 17, 48, 50-52. Phthalate esters[11]	G, FP-lined cap	Cool, ≤6 °C[18]	7 days until extraction, 40 days after extraction

Parameter number/name	Container [1]	Preservation [2,3]	Maximum holding time [4]
82-84. Nitrosamines[11 14]	G, FP-lined cap	Cool, ≤6 °C[18], store in dark, 0.008% $Na_2S_2O_3$[5]	7 days until extraction, 40 days after extraction.
88-94. PCBs[11]	G, FP-lined cap	Cool, ≤6 °C[18]	1 year until extraction, 1 year after extraction.
54, 55, 75, 79 Nitroaromatics and isophorone[11]	G, FP-lined cap	Cool, <6 °C[18], store in dark, 0.008% $Na_2S_2O_3$[5]	7 days until extraction, 40 days after extraction.
1, 2, 5, 8-12, 32, 33, 58, 59, 74, 78, 92, 94. Polynuclear aromatic hydrocarbons [11]	G, FP-lined cap	Cool, ≤6 °C[18], store in dark, 0.008% $Na_2S_2O_3$[5]	7 days until extraction, 40 days after extraction
15, 16, 21, 31, 87. Halocthers[11]	G, FP-lined cap	Cool, ≤6 °C[18], 0.008% $Na_2S_2O_3$[5]	7 days until extraction, 40 days after extraction.
29, 35-37, 63-65, 73, 100. Chlorinated hydrocarbons [11]	G, FP-lined cap	Cool, ≤6 °C[18]	7 days until extraction, 40 days after extraction
60-62, 66-72, 85, 86, 88-90, 95, 96. CDDs/CDFs [11]	G	See footnote 11	See footnote 11
Aqueous Samples: Field and Lab Preservation	G	Cool, ≤6 °C[18], 0.008% $Na_2S_2O_3$[5], pH <9	1 Year.
Solids and Mixed-Phase Samples: Field Preservation	G	Cool, ≤6 °C[18]	7 Days.
Tissue Samples: Field Preservation	G	Cool, ≤6 °C[18]	24 Hours
Solids, Mixed-Phase, and Tissue Samples: Lab Preservation	G	Freeze, ≤−10 °C	1 Year
107-111. Alkylated phenols	G	Cool, <6 °C, 0.008% $Na_2S_2O_3$[5], H_2SO_4 to pH <2	28 days until extraction, 40 days after extraction
112. Adsorbable Organic Halides (AOX)	G	Cool, <6 °C, 0.008% $Na_2S_2O_3$[5], HNO_3 to pH <2	Hold *at least* 3 days, but not more than 6 months
113. Chlorinated Phenolics	G, FP-lined cap	Cool, <6 °C, 0.008% $Na_2S_2O_3$[5], H_2SO_4 to pH <2	30 days until acetylation, 30 days after acetylation

Parameter number/name	Container [1]	Preservation [2,3]	Maximum holding time [4]
114. Adsorbable Organic Fluorine (AOF)	HDPE with linerless HDPE or PP caps [26]	Cool, <6 °C	90 days
* * * * * * *			
Table Ii—Polychlorinated Biphenyl Congener Tests			
1-210. PCB Congeners			
Aqueous Samples: Field Preservation	G, FP-lined cap	Cool, ≤6 °C[18], 0.008% $Na_2S_2O_3$[5]	1 year
Solids, Biosolids, and Mixed-Phase Samples: Field Preservation	G, FP-lined cap	Cool, ≤6 °C[18]	1 year
Tissue Samples: Field Preservation	G, FP-lined cap	Cool, ≤6 °C[18]	24 hours
Solids, Biosolids, Mixed-Phase, and Tissue Samples: Lab Preservation	G, FP-lined cap	Freeze, ≤ -10 °C	1 year
Sample Extracts	G, amber	Freeze, < -20 °C	1 year
Table Ij—Per- and Polyfluorinated Alkyl Substances Tests			
1-40. PFAS			
Aqueous Samples: Field Preservation	HDPE or PP, linerless cap[27]	Cool, ≤6 °C[18]	48 hours
Solids, Biosolids, and Mixed-Phase Samples: Field Preservation	HDPE, linerless cap[27]	Cool, ≤6 °C[18]	24 hours [28], or 48 hours
Tissue Samples: Field Preservation	HDPE, linerless cap[27]	Cool, ≤6 °C[18], or Freeze, ≤ -20 °C	24 hours [28], or 48 hours [29]
Leachate Samples: Field Preservation	HDPE or PP, linerless cap[27]	Cool, ≤6 °C[18]	48 hours
Aqueous and Leachate Samples: Lab Preservation	HDPE or PP, linerless cap[27]	Cool, ≤6 °C[18], or Freeze, ≤ -20 °C	28 days, or 90 days
Solids, Biosolids, and Mixed-Phase Samples: Lab Preservation	HDPE, linerless cap[27]	Cool, ≤6 °C[18], or Freeze, ≤ -20 °C	90 days
Tissue Samples: Lab Preservation	HDPE, linerless cap[27]	Freeze, ≤ -20 °C	90 days
Sample Extracts		Cool, ≤6 °C[18], or Freeze, ≤ 0 °C	90 days

[1] "P" is for polyethylene; "FP" is fluoropolymer (polytetrafluoroethylene [PTFE]; Teflon®), or other fluoropolymer, unless stated otherwise in this Table II; "G" is glass; "PA" is any plastic that is made of a sterilizable material (polypropylene or other autoclavable plastic); "LDPE" is low density polyethylene;

"HDPE" is high density polyethylene; "PP" is polypropylene.

[2] Except where noted in this Table II and the method for the parameter, preserve each grab sample within 15 minutes of collection. For a composite sample collected with an automated sample (e.g., using a 24-hour composite sample; see 40 CFR 122.21(g)(7)(i) or 40 CFR part 403, appendix E), refrigerate the sample at ≤ 6 °C during collection unless specified otherwise in this Table II or in the method(s). For a composite sample to be split into separate aliquots for preservation and/or analysis, maintain the sample at ≤ 6 °C, unless specified otherwise in this Table II or in the method(s), until collection, splitting, and preservation is completed. Add the preservative to the sample container prior to sample collection when the preservative will not compromise the integrity of a grab sample, a composite sample, or aliquot split from a composite sample within 15 minutes of collection. If a composite measurement is required but a composite sample would compromise sample integrity, individual grab samples must be collected at prescribed time intervals (e.g., 4 samples over the course of a day, at 6-hour intervals). Grab samples must be analyzed separately and the concentrations averaged. Alternatively, grab samples may be collected in the field and composited in the laboratory if the compositing procedure produces results equivalent to results produced by arithmetic averaging of results of analysis of individual grab samples. For examples of laboratory compositing procedures, see EPA Method 1664 Rev. A (oil and grease) and the procedures at 40 CFR 141.24(f)(14)(iv) and (v) (volatile organics).

[3] When any sample is to be shipped by common carrier or sent via the U.S. Postal Service, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirement of Table II, the Office of Hazardous Materials, Materials Transportation Bureau, Department of Transportation has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater; Nitric acid (HNO3) in water solutions at concentrations of 0.15% by weight or less (pH about 1.62 or greater); Sulfuric acid (H2SO4) in water solutions at concentrations of 0.35% by weight or less (pH about 1.15 or greater); and Sodium hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).

[4] Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before the start of analysis and still be considered valid. Samples may be held for longer periods only if the permittee or monitoring laboratory have data on file to show that, for the specific types of samples under study, the analytes are stable for the longer time, and has received a variance from

the Regional ATP Coordinator under § 136.3(e). For a grab sample, the holding time begins at the time of collection. For a composite sample collected with an automated sampler (e.g., using a 24-hour composite sampler; see 40 CFR 122.21(g)(7)(i) or 40 CFR part 403, appendix E), the holding time begins at the time of the end of collection of the composite sample. For a set of grab samples composited in the field or laboratory, the holding time begins at the time of collection of the last grab sample in the set. Some samples may not be stable for the maximum time period given in the table. A permittee or monitoring laboratory is obligated to hold the sample for a shorter time if it knows that a shorter time is necessary to maintain sample stability. See § 136.3(e) for details. The date and time of collection of an individual grab sample is the date and time at which the sample is collected. For a set of grab samples to be composited, and that are all collected on the same calendar date, the date of collection is the date on which the samples are collected. For a set of grab samples to be composited, and that are collected across two calendar dates, the date of collection is the dates of the two days; e.g., November 14-15. For a composite sample collected automatically on a given date, the date of collection is the date on which the sample is collected. For a composite sample collected automatically, and that is collected across two calendar dates, the date of collection is the dates of the two days; e.g., November 14-15. For static-renewal toxicity tests, each grab or composite sample may also be used to prepare test solutions for renewal at 24 h, 48 h, and/or 72 h after first use, if stored at 0-6 °C, with minimum head space.

[5] ASTM D7365-09a specifies treatment options for samples containing oxidants (e.g., chlorine) for cyanide analyses. Also, Section 9060A of Standard Methods for the Examination of Water and Wastewater (23rd edition) addresses dechlorination procedures for microbiological analyses. Section A.2 of Standard Method 4500-NH3 discusses the need for dechlorination of samples for ammonia analysis. Addition of sodium thiosulfate to samples for other parameters is only necessary when oxidants are present (e.g., chlorine).

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[8] Guidance applies to samples to be analyzed by GC, LC, or GC/MS for specific compounds.

[9] If the sample is not adjusted to pH 2, then the sample must be analyzed within seven days of sampling.

[10] Samples for acrolein receiving no pH adjustment must be analyzed within 3 days of sampling.

[11] When the extractable analytes of concern fall within a single chemical category, the specified preservative and maximum holding times should be observed for optimum safeguard of sample integrity (i.e., use all necessary preservatives and hold for the shortest time listed). When the analytes of concern fall within two or more chemical categories, the sample may be preserved by

cooling to ≤6 °C, reducing residual chlorine with 0.008% sodium thiosulfate, storing in the dark, and adjusting the pH to 6-9; samples preserved in this manner may be held for seven days before extraction and for forty days after extraction. Exceptions to this optional preservation and holding time procedure are noted in footnote 5 (regarding the requirement for thiosulfate reduction), and footnotes 12, 13 (regarding the analysis of benzidine).

[12] If 1,2-diphenylhydrazine is likely to be present, adjust the pH of the sample to 4.0 ± 0.2 to prevent rearrangement to benzidine.

[13] Extracts may be stored up to 30 days at <0 °C.

[14] For the analysis of diphenylnitrosamine, add 0.008% Na2 S2 O3 and adjust pH to 7-10 with NaOH within 24 hours of sampling.

* * * * *

[17] Samples collected for the determination of trace level mercury (<100 ng/L) using EPA Method 1631 or EPA Method 245.7 must be collected in tightly-capped fluoropolymer or glass bottles and preserved with BrCl or HCl solution within 48 hours of sample collection. The time to preservation may be extended to 28 days if a sample is oxidized in the sample bottle. A sample collected for dissolved trace level mercury should be filtered in the laboratory within 24 hours of the time of collection. However, if circumstances preclude overnight shipment, the sample should be filtered in a designated clean area in the field in accordance with procedures given in Method 1669. If sample integrity will not be maintained by shipment to and filtration in the laboratory, the sample must be filtered in a designated clean area in the field within the time period necessary to maintain sample integrity. A sample that has been collected for determination of total or dissolved trace level mercury must be analyzed within 90 days of sample collection.

[18] Aqueous samples must be preserved at ≤ 6 °C, and should not be frozen unless data demonstrating that sample freezing does not adversely impact sample integrity is maintained on file and accepted as valid by the regulatory authority. Also, for purposes of NPDES monitoring, the specification of "≤ 6 °C" is used in place of the "4 °C" and "< 4 °C" sample temperature requirements listed in some methods. It is not necessary to measure the sample temperature to three significant figures (1/100th of 1 degree); rather, three significant figures are specified so that rounding down to 6 °C may not be used to meet the ≤ 6 °C requirement. The preservation temperature does not apply to samples that are analyzed immediately (less than 15 minutes).

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[25] Samples to be analyzed for total phosphorous using EPA Method 200.7 or another approved ICP/AES method may be preserved using nitric acid to pH < 2, or the acid-preserved sample for metals may be used

for analysis, and the holding time for total phosphorus may be extended to 6 months.

[26] For AOF, collect three separate containers (see Section 8 of Method 1621).

[27] Samples for EPA Method 1633 are collected in HDPE containers with linerless HDPE or PP caps. Aqueous samples for ASTM D841-22 are collected in pre-labeled and pre-weighed 15-mL PP tubes. Containers for either method must be lot-tested and shown to be free of detectable PFAS.

[28] Samples should be extracted within 24 hours if NFDHA is a required analyte for a given project.

[29] If the whole fish or other seafood sample is frozen within 48 hours of collection, the holding time begins when the tissue is processed for analysis (e.g., filleting, grinding, removal of specific tissue for analysis. Prepared tissue sample aliquots may be held for up to 90 days when stored at less than or equal to -20 °C.

[FR Doc. 2024–29239 Filed 1–17–25; 8:45 am]
BILLING CODE 6560–50–C

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2024–0562; FRL–12480–01–OCSPP]

40 CFR Part 156

Pesticides; Petition Seeking Rulemaking To Modify Labeling Requirements for Pesticides and Devices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Petition for rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of and seeking public comment on a petition received from the Attorneys General of the States of Nebraska, Iowa, Alabama, Arkansas, Georgia, Indiana,

Louisiana, Montana, North Dakota, South Carolina, and South Dakota requesting the Agency initiate rulemaking to amend the existing regulations under the Federal Insecticide, Rodenticide, and Fungicide Act (FIFRA). The Attorneys General believe the Agency should modify its requirements such that any state labeling requirements inconsistent with EPA's findings and conclusions from its human health risk assessment on human health effects, such as a pesticide's likelihood to cause cancer, birth defects, or reproductive harm, constitute misbranding.

DATES: Comments must be received on or before February 20, 2025.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2024–0562, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *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 *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including pesticide registrants, environmental, human health, and agricultural advocates, pesticide users, and members of the public interested in the use of pesticides. This listing is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be affected by his action. Because others may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *Regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. What action is the Agency taking?

EPA requests public comment on a petition received from several state Attorneys General that asks EPA to amend 40 CFR 156.10(a)(5) by adding a paragraph (xi) to include the following as an example of statements or representations in the labeling which constitute misbranding: ''Statements or conclusions regarding the product's human health effects, including the likelihood of causing cancer, birth defects, or reproductive harm, that are different from EPA's findings and

conclusions stated in its human health risk assessment conducted during the registration review of the product's principal active ingredients.''

A copy of the petition is available in the docket.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 23, 2024.

Edward Messina,

Director, Office of Pesticide Programs.

[FR Doc. 2025–00251 Filed 1–17–25; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FXES1111090FEDR–256–FF09E21000]

Endangered and Threatened Wildlife and Plants; 90-Day Findings for Eight Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of petition findings and initiation of status reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on seven petitions to add species to, and one petition to remove a species from, the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petitions to list the Amargosa toad (*Anaxyrus nelsoni*), Carson Valley monkeyflower (*Erythranthe carsonensis*), large marble butterfly (*Euchloe ausonides*) (including the large marble butterfly type subspecies (*Euchloe ausonides ausonides*)), Mohave ground squirrel (*Xerospermophilus mohavensis*), Morrison bumble bee (*Bombus morrisoni*), Oasis Valley population of Amargosa speckled dace (*Rhinichthys nevadensis nevadensis;* hereafter referred to as ''Oasis Valley speckled dace''), Tennessee bottlebrush crayfish (*Barbicambarus simmonsi*), and one petition to delist the golden-cheeked warbler (*Setophaga chrysoparia*) present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we are initiating status reviews of these species to determine whether the petitioned actions are warranted. To ensure that the status reviews are comprehensive, we request scientific and commercial data and other information regarding the species and factors that may affect their status. Based on the status reviews, we will issue 12-month petition findings, which will address whether or not the petitioned actions are warranted, in accordance with the Act.

DATES: WThese findings were made on January 21, 2025.

ADDRESSES: *Supporting documents:* Summaries of the basis for the petition findings contained in this document are available on *https://www.regulations.gov* under the appropriate docket number (see table 1 under **SUPPLEMENTARY INFORMATION**). In addition, this supporting information is available by contacting the appropriate person, as specified in **FOR FURTHER INFORMATION CONTACT**.

Status reviews: If you have new scientific or commercial data or other information concerning the status of, or threats to, the Amargosa toad, Carson Valley monkeyflower, golden-cheeked warbler, large marble butterfly (including the large marble butterfly type subspecies), Mohave ground squirrel, Morrison bumble bee, Oasis Valley speckled dace, and Tennessee bottlebrush crayfish, or their habitats, please provide those data or information by one of the following methods listed below.

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter the appropriate docket number (see table 1 under **SUPPLEMENTARY INFORMATION**). Then, click on the ''Search'' button. After finding the correct document, you may submit information by clicking on ''Comment.'' If your information will fit in the provided comment box, please use this feature of *https://www.regulations.gov,* as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard* copy: Submit by U.S. mail to: Public Comments Processing, Attn: [Insert appropriate docket number; see table 1 under **SUPPLEMENTARY INFORMATION**], U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information we receive on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Information Submitted for a Status Review,* below).

FOR FURTHER INFORMATION CONTACT:

Species common name	Contact person
Amargosa toad and Oasis Valley speckled dace.	Glen Knowles, Field Supervisor, Southern Nevada Fish and Wildlife Office, 702–515–5244, *glen_knowles@fws.gov*.
Carson Valley monkeyflower	Kristin Jule, Field Supervisor, Reno Fish and Wildlife Office, 775–861–6337, *kristin_jule@fws.gov*.
Golden-cheeked warbler	Michael Warriner, Supervisory Fish and Wildlife Biologist, Austin Ecological Services Field Office, 512–937–7371, *michael_warriner@fws.gov*.
Large marble butterfly (including the large marble type subspecies).	Michael Fris, Field Supervisor, Sacramento Fish and Wildlife Office, 916–425–0099, *michael_fris@fws.gov*.
Mohave ground squirrel	Scott Sobiech, Field Supervisor, Carlsbad Fish and Wildlife Office, 760–431–9440, *scott_sobiech@fws.gov*.
Morrison bumble bee	Shawn Sartorius, Field Supervisor, New Mexico Ecological Services Field Office, 505–761–4781, *shawn_sartorius@fws.gov*.
Tennessee bottlebrush crayfish	Bill Pearson, Field Supervisor, Alabama Ecological Services Field Office, 251–441–5870, *bill_pearson@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:

Information Submitted for a Status Review

You may submit your comments and materials concerning the status of, or threats to, the Amargosa toad, Carson Valley monkeyflower, golden-cheeked warbler, large marble butterfly (including the large marble butterfly type subspecies), Mohave ground squirrel, Morrison bumble bee, Oasis Valley speckled dace, and Tennessee bottlebrush crayfish, or their habitats, by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing these findings, will be available for public inspection on *https://www.regulations.gov.*

Background

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists or List) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the List (*i.e.,* ''list'' a species), remove a species from the List (*i.e.,* ''delist'' a species), or change a listed species' status from endangered to threatened or from threatened to endangered (*i.e.,* ''reclassify'' a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the **Federal Register**.

In 2016, the Service and the National Marine Fisheries Service of the Department of Commerce revised the regulations that outline the procedures for evaluating petitions (81 FR 66462; September 27, 2016). These regulations at 50 CFR 424.14 were effective October 27, 2016. These current regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted (50 CFR 424.14(h)(1)(i)). A positive 90-day petition finding does not indicate that the petitioned action is warranted; the finding indicates only that the petitioned action may be warranted and that a full review should occur. When evaluating the seven petitions (received after September 27, 2016) to add species to the Lists of Endangered and Threatened Wildlife and Plants, we applied the current regulations at 50 CFR 424.14.

We received the petition to delist the golden-cheeked warbler prior to the effective date of the current regulations. Therefore, we evaluated the golden-cheeked warbler petition under the 50 CFR 424.14 requirements that were in effect prior to October 27, 2016, as those requirements applied when the petition was received. The regulations in effect prior to October 27, 2016, establish that the standard for substantial scientific or commercial information with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (former 50 CFR 424.14(b)).

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)). The five factors are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

(c) Disease or predation (Factor C);

(d) The inadequacy of existing regulatory mechanisms (Factor D); and

(e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition, or the action or condition itself. However, the mere identification of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. The information presented in the petition must include evidence sufficient to suggest that these threats may be affecting the species to the point that the species may meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act.

If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for

12-month findings (81 FR 49248; July 27, 2016).

We note that designating critical habitat is not a petitionable action under the Act. Petitions to designate critical habitat (for species without existing critical habitat) are reviewed under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and are not addressed in these findings (see 50 CFR 424.14(j)). To the maximum extent prudent and determinable, any proposed critical habitat will be addressed concurrently with a proposed rule to list a species, if applicable.

Summaries of Petition Findings

The petition findings contained in this document are listed in the tables below, and the basis for each finding, along with supporting information, is available on *https://www.regulations.gov* under the appropriate docket number.

TABLE 1—STATUS REVIEWS

Common name	Docket No.	URL to docket on *https://www.regulations.gov*
Amargosa toad	FWS–R8–ES–2024–0176	*https://www.regulations.gov/docket/FWS-R8-ES-2024-0176*.
Carson Valley monkeyflower	FWS–R8–ES–2024–0100	*https://www.regulations.gov/docket/FWS-R8-ES-2024-0100*.
Golden-cheeked warbler	FWS–R2–ES–2024–0179	*https://www.regulations.gov/docket/FWS-R2-ES-2024-0179*.
Large marble butterfly (including the large marble type subspecies).	FWS–R8–ES–2024–0097	*https://www.regulations.gov/docket/FWS-R8-ES-2024-0097*.
Mohave ground squirrel	FWS–R8–ES–2024–0098	*https://www.regulations.gov/docket/FWS-R8-ES-2024-0098*.
Morrison bumble bee	FWS–R2–ES–2024–0099	*https://www.regulations.gov/docket/FWS-R2-ES-2024-0099*.
Oasis Valley speckled dace	FWS–R8–ES–2024–0177	*https://www.regulations.gov/docket/FWS-R8-ES-2024-0177*.
Tennessee bottlebrush crayfish	FWS–R4–ES–2024–0101	*https://www.regulations.gov/docket/FWS-R4-ES-2024-0101*.

Evaluation of a Petition To List Amargosa Toad

Species and Range

Amargosa toad (*Anaxyrus nelsoni*); Nye County, Nevada.

Petition History

On May 29, 2024, we received a petition from the Center for Biological Diversity (CBD), requesting that the Amargosa toad (*Anaxyrus nelsoni*) be listed as a threatened species or an endangered species and critical habitat be designated for this species under the Act. The petitioner also asked that we consider using the emergency provisions of the Act to list the species. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). Listing a species on an emergency basis is not a petitionable action under the Act, and the question of when to list on an emergency basis is left to the discretion of the Service. If the Service determines that the standard for emergency listing in section 4(b)(7) of the Act is met, the Service may exercise that discretion to take an emergency listing action at any time. At this time, the Service has not determined that the standard for emergency listing has been met. Therefore, we are considering the May 29, 2024, petition as a petition to list the Amargosa toad. This finding addresses the petition.

Finding

We reviewed the petition, sources cited in the petition, and other readily available information (within the constraints of the Act and 50 CFR 424.14(h)(1)). We considered the credible information that the petition provided regarding effects of the threats that fall within factors under the Act's section 4(a)(1) as potentially ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts. Based on our review of the petition and readily available information regarding gold mining (Factor A), we find that the petition presents substantial scientific or commercial information indicating that listing the Amargosa toad as an endangered species or a threatened species may be warranted.

The petitioners also presented information suggesting solar energy development, wild burros, livestock grazing, off-road vehicles, road maintenance and runoff, invasive plants, water abstraction and diversion, chytridiomycosis, predation by bullfrogs and nonnative crayfish, hybridization with Woodhouse's toad (*Anaxyrus woodhousii*), climate change, and stochastic events may be threats to the Amargosa toad. We will fully evaluate these potential threats during our 12-month status review, pursuant to the Act's requirement to review the best scientific and commercial information available when making that finding.

The basis for our finding on this petition and other information regarding our review of the petition can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2024–0176 under the Supporting Documents section.

Evaluation of a Petition To List the Carson Valley Monkeyflower

Species and Range

Carson Valley monkeyflower (*Erythranthe carsonensis*); Carson City, Douglas, Lyon, and Washoe Counties, Nevada; Alpine County, California.

Petition History

On January 8, 2024, we received a petition from CBD requesting that the Carson Valley monkeyflower (*Erythranthe carsonensis*) be listed as a threatened species and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Finding

We reviewed the petition, sources cited in the petition, and other readily available information (within the constraints of the Act and 50 CFR 424.14(h)(1)). We considered the credible information that the petition provided regarding effects of the threats that fall within factors under the Act's section 4(a)(1) as potentially ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts. Based on our review of the petition and readily available information regarding habitat loss associated with commercial, residential, and industrial development (Factor A), we find that the petition presents substantial scientific or commercial information indicating that listing the Carson Valley monkeyflower

as an endangered species or a threatened species may be warranted.

The petitioners also presented information suggesting road development and maintenance, off-highway vehicle use, other recreational use, mineral exploration and development, trash dumping, utility corridor development and maintenance, animal grazing and trampling, fire and fire suppression activities, flooding, and stormwater management may be threats to the Carson Valley monkeyflower. We will fully evaluate these potential threats during our 12-month status review, pursuant to the Act's requirement to review the best scientific and commercial information available when making that finding.

The basis for our finding on this petition and other information regarding our review of the petition can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2024–0100 under the Supporting Documents section.

Evaluation of a Petition To Delist the Golden-Cheeked Warbler

Species and Range

Golden-cheeked warbler (*Setophaga chrysoparia*); Texas, United States; Chiapas, Mexico; and Central America (Guatemala, Honduras, Nicaragua, and El Salvador).

Petition History

On June 30, 2015, we received a petition dated June 29, 2015, from Nancie G. Marzulla (Marzulla Law, LLC—Washington, DC) and Robert Henneke (Texas Public Policy Foundation—Austin, TX) requesting that the golden-cheeked warbler (*Setophaga chrysoparia*) be delisted under the Act due to recovery or error in information. The petition clearly identified itself as a petition and included the requisite identification information for the petitioner, as required by the former 50 CFR 424.14(a). No information is presented that would suggest that the species was originally listed due to an error in information. The golden-cheeked warbler is a taxonomically unique species and was shown to be in danger of extinction at the time of the listing.

On December 11, 2015, we received supplemental information from the petitioners that included additional published studies and an unpublished report. The studies and report, as well as other studies known to the Service and in our files at the time the supplement was received, were considered, as appropriate. On June 3, 2016, we published in the **Federal Register** (81 FR 35698) our finding that the petition did not provide substantial scientific or commercial information indicating that the petition action (*i.e.,* delisting) may be warranted. The General Land Office of Texas (GLO) challenged this negative 90-day finding on the petition to delist. The District Court found in favor of the Service. The GLO appealed the decision, and the Circuit Court vacated the 90-day finding and remanded it to the Service. On July 27, 2021, the Service published another 90-day finding in the **Federal Register** (86 FR 40186) that the petition did not present substantial scientific or commercial information indicating that the petitioned action was warranted. The GLO filed suit against the Service on January 12, 2022, challenging the new 90-day finding. On September 5, 2024, the District Court vacated and remanded the July 27, 2021, 90-day finding to the Service. This finding addresses the petition as remanded by the District Court.

Finding

We reviewed the petition, sources cited in the petition, supplemental information provided, and other readily available information (within the constraints of the Act and former 50 CFR 424.14(b)). We considered the information that the petition provided regarding effects of the threats that fall within factors under section 4(a)(1) as potentially ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts. The petitioner provided substantial information indicating that greater amounts of golden-cheeked warbler habitat occur across the species range, the species is capable of utilizing smaller habitat patches, and warblers are more abundant than previously thought (Factor A). Additionally, oak wilt may not be as significant of a stressor to warbler habitat (Factor E). Based on our review of the petition, sources cited in the petition, and other readily available information, we find that the petition presents substantial scientific or commercial information indicating that delisting the golden-cheeked warbler may be warranted. We will fully evaluate these potential threats during our 12-month status review, pursuant to the Act's requirements to review the best scientific and commercial data available when making that finding.

The basis for our finding on this petition and other information regarding our review of the petition can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R2–ES–2024–0179 under the Supporting Documents section.

Evaluation of a Petition To List the Large Marble Butterfly and the Large Marble Type Subspecies

Species and Range

Large marble butterfly (*Euchloe ausonides*); Alaska, California, Colorado, Idaho, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, United States; Yukon Territory, British Columbia, Northwest Territories, Nunavut, Alberta, Saskatchewan, Manitoba, and Ontario, Canada.

Large marble butterfly type subspecies (*Euchloe ausonides ausonides*); central western California.

Petition History

On October 3, 2023, we received a petition from the Xerces Society for Invertebrate Conservation, requesting that the large marble butterfly be listed as a threatened species and the large marble type subspecies be listed as an endangered species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Finding

We reviewed the petition, sources cited in the petition, and other readily available information (within the constraints of the Act and 50 CFR 424.14(h)(1)). We considered the credible information that the petition provided regarding effects of the threats that fall within factors under the Act's section 4(a)(1) as potentially ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts. Based on our review of the petition and readily available information regarding habitat loss and degradation from urbanization (Factor A), we find that the petition presents substantial scientific or commercial information indicating that listing the large marble butterfly as a threatened species and that listing the large marble butterfly type subspecies as an endangered species may be warranted.

The petitioners also presented information suggesting that habitat conversion to agriculture, livestock grazing, herbicide impacts to nectar and host plants, changes in wildfire regimes, predation by nonnative predators and parasitoids, pesticide use, climate change, and loss of genetic diversity may be threats to the large marble butterfly and the *E. a. ausonides* subspecies. We will fully evaluate these potential threats during our 12-month

status review, pursuant to the Act's requirement to review the best scientific and commercial information available when making that finding.

The basis for our finding on this petition and other information regarding our review of the petition can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2024–0097 under the Supporting Documents section.

Evaluation of a Petition To List the Mohave Ground Squirrel

Species and Range

Mohave ground squirrel (*Xerospermophilus mohavensis*); southwestern Inyo, eastern Kern, northeastern Los Angeles, and northwestern San Bernardino counties, California.

Petition History

On December 13, 2023, we received a petition from Defenders of Wildlife, Desert Tortoise Preserve Committee, Inc., Mohave Ground Squirrel Conservation Council, and Dr. Philip Leitner, requesting that the Mohave ground squirrel be listed as a threatened species and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Finding

We reviewed the petition, sources cited in the petition, and other readily available information (within the constraints of the Act and 50 CFR 424.14(h)(1)). We considered the credible information that the petition provided regarding effects of the threats that fall within factors under the Act's section 4(a)(1) as potentially ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts. Based on our review of the petition and readily available information regarding habitat loss, degradation, and fragmentation (Factor A), we find that the petition presents substantial scientific or commercial information indicating that listing the Mohave ground squirrel as an endangered or a threatened species may be warranted. The petitioners also presented information suggesting commercial filming activities, hybridization, competition, and climate change may be threats to the Mohave ground squirrel. We will fully evaluate these potential threats during our 12-month status review, pursuant to the Act's requirement to consider the best scientific and commercial information available when making that finding.

The basis for our finding on this petition and other information regarding our review of the petition can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2024–0098 under the Supporting Documents section.

Evaluation of a Petition To List Morrison Bumble Bee

Species and Range

Morrison bumble bee (*Bombus morrisoni*); eastern Sierra Nevada Mountain range, through northeastern Arizona and northern New Mexico, north to Colorado and Rocky Mountains in the east, and portions of Idaho and Washington.

Petition History

On November 16, 2023, we received a petition from the Xerces Society requesting that the Morrison bumble bee (*Bombus morrisoni*) be listed as either a threatened species or endangered species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Finding

We reviewed the petition, sources cited in the petition, and other readily available information (within the constraints of the Act and 50 CFR 424.14(h)(1)). We considered the credible information that the petition provided regarding the effects of the threats that fall within factors under the Act's section 4(a)(1) as may be ameliorated or exacerbated by existing regulatory mechanisms or conservation efforts. Based on our review of the petition and sources cited in the petition regarding pesticides (Factor E), livestock overgrazing (Factor A), urban development (Factor A), agricultural intensification (Factor A), pathogens and parasites (Factor C), and global climate change (Factor E), we find that the petition presents substantial scientific or commercial information indicating that listing the Morrison bumble bee as an endangered or threatened species may be warranted.

The petitioners also present information suggesting the following may be threats to the Morrison bumble bee: energy development and mining; overutilization for commercial, recreational scientific or educational purposes; pathogen spillover; the effects of small, isolated populations; and competition with commercial honeybees. The petition also suggests that despite the existing regulatory mechanisms, potential threats continue to negatively affect the species. We will fully evaluate these potential threats during our status review, pursuant to the Act's requirement to review the best scientific and commercial information available when making our 12-month finding.

The basis for our finding on this petition and other information regarding our review of the petition can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R2–ES–2024–0099 under the Supporting Documents section.

Evaluation of a Petition To List the Oasis Valley Speckled Dace

Species and Range

Amargosa speckled dace [Oasis Valley distinct population segment] (*Rhinichthys nevadensis nevadensis*) (=Oasis Valley speckled dace)—provisional determination; Nye County, Nevada.

Petition History

On July 2, 2024, we received a petition from CBD, requesting that the Oasis Valley speckled dace distinct population segment of Amargosa speckled dace be listed as a threatened species or an endangered species and critical habitat be designated for this species under the Act. Based on our review of the petition, sources cited in the petition, and other readily available information, we find that the petition presents substantial information that the Oasis Valley population may be discrete based on marked separation from other populations of the taxon as a consequence of physical separation and evidenced by genetic differences. This suggests that the petitioned population segment differs markedly from other populations of Amargosa speckled dace in its genetic characteristics. As such, the petitioned population segment may be significant per criterion 4 of our DPS policy due to evidence that the population segment differs markedly from other populations of the species in its genetic characteristics (61 FR 4725). Therefore, we find that the petition provides substantial scientific or commercial information indicating that the petitioned entity may qualify as a DPS and, therefore, that it may be a listable entity under the Act. For the purposes of this 90-day finding evaluation, we will use the generally recognized common name—Oasis Valley speckled dace—to refer to the Oasis Valley population of Amargosa speckled dace that occurs in the

watershed of the Amargosa River in Oasis Valley, Nevada.

The petitioner also asked that we consider using the emergency provisions of the Act to list the species. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). Listing a species on an emergency basis is not a petitionable action under the Act, and the question of when to list on an emergency basis is left to the discretion of the Service. If the Service determines that the standard for emergency listing in section 4(b)(7) of the Act is met, the Service may exercise that discretion to take an emergency listing action at any time. Therefore, we are considering the July 2, 2024, petition as a petition to list the Oasis Valley speckled dace. This finding addresses the petition.

Finding

We reviewed the petition, sources cited in the petition, and other readily available information (within the constraints of the Act and 50 CFR 424.14(h)(1)). We considered the credible information that the petition provided regarding effects of the threats that fall within factors under the Act's section 4(a)(1) as potentially ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts. Based on our review of the petition and readily available information] regarding gold mining (Factor A), we find that the petition presents substantial scientific or commercial information indicating that listing the Oasis Valley speckled dace as an endangered species or a threatened species may be warranted.

The petitioners also presented information suggesting solar energy development, water diversions, livestock grazing, wild burros, invasive species, climate change, and the effects of isolated populations may be threats to the Oasis Valley speckled dace We will fully evaluate these potential threats during our 12-month status review, pursuant to the Act's requirement to review the best scientific and commercial information available when making that finding.

The basis for our finding on this petition and other information regarding our review of the petition can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2024–0177 under the Supporting Documents section.

Evaluation of a Petition To List Tennessee Bottlebrush Crayfish

Species and Range

Tennessee bottlebrush crayfish (*Barbicambarus simmonsi*); Lawrence County, Tennessee, and Lauderdale County, Alabama.

Petition History

On June 16, 2023, we received a petition from CBD, requesting that the Tennessee bottlebrush crayfish (*Barbicambarus simmonsi*) be listed as a threatened or endangered species and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Finding

We reviewed the petition, sources cited in the petition, and other readily available information (within the constraints of the Act and 50 CFR 424.14(h)(1)). We considered the credible information that the petition provided regarding effects of the threats that fall within factors under the Act's section 4(a)(1) as potentially ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts. Based on our review of the petition and readily available information regarding habitat destruction and alteration from the effects of dams and land use practices including agriculture, silviculture, urban runoff, and wastewater treatment facilities (Factor A), we find that the petition presents substantial scientific or commercial information indicating that listing the Tennessee bottlebrush crayfish as an endangered species or a threatened species may be warranted.

The petitioners also presented information suggesting overutilization or collection and impacts of climate change may be threats to the Tennessee bottlebrush crayfish. The petitioners also provided information that, despite the existing regulatory mechanisms, these potential threats are still affecting the species. We will fully evaluate these potential threats during our 12-month status review, pursuant to the Act's requirement to review the best scientific and commercial information available when making that finding.

The basis for our finding on this petition and other information regarding our review of the petition can be found at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2024–0101 under the Supporting Documents section.

Conclusion

On the basis of our evaluation of the information presented in the petitions under section 4(b)(3)(A) of the Act, we have determined that the petitions summarized above for the Amargosa toad, Carson Valley monkeyflower, golden-cheeked warbler, large marble butterfly (including the large marble butterfly type subspecies), Mohave ground squirrel, Morrison bumble bee, Oasis Valley speckled dace, and Tennessee bottlebrush crayfish present substantial scientific or commercial information indicating that the petitioned actions may be warranted. We are, therefore, initiating status reviews of these species to determine whether the actions are warranted under the Act. At the conclusion of the status reviews, we will issue findings, in accordance with section 4(b)(3)(B) of the Act, as to whether the petitioned actions are not warranted, warranted, or warranted but precluded by pending proposals to determine whether any species is an endangered species or a threatened species.

Authors

The primary authors of this document are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

Authority

The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2025–01118 Filed 1–17–25; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2024–0083; FXES1111090FEDR–256–FF09E21000]

RIN 1018–BG16

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Big Red Sage

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the big red sage (*Salvia pentstemonoides*), a plant species from central Texas, as an endangered species under the Endangered Species Act of

1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the big red sage. After a review of the best available scientific and commercial information, we find that listing the species is warranted. If we finalize this rule as proposed, it would add this species to the List of Endangered and Threatened Plants and extend the Act's protections to the species. We have determined that designating critical habitat for the big red sage is not prudent.

DATES: We will accept comments received or postmarked on or before March 24, 2025. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by March 7, 2025.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R2–ES–2024–0083, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2024–0083, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available on the Service's website at *https://www.fws.gov/office/austin-ecological-services,* at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2024–0083, or both.

FOR FURTHER INFORMATION CONTACT: Karen Myers, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 1505 Ferguson Lane, Austin, TX 78754; telephone 512–937–7371. 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. Please see Docket No. FWS–R2–ES–2024–0083 on *https://www.regulations.gov* for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act (16 U.S.C. 1531 *et seq.*), a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the big red sage meets the Act's definition of an endangered species; therefore, we are proposing to list it as such. Listing a species as an endangered or threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. We propose to list the big red sage as an endangered species under the Act.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that big red sage is endangered due to the following threats: herbivory (Factor C), collection and inappropriate propagation (Factor B), land use changes (Factor A), and effects from climate change such as flash floods and erosion (Factor E).

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary), to the maximum extent prudent and determinable, to designate critical habitat concurrent with listing. We have determined that designating critical habitat for big red sage is not prudent because one of the main drivers of the species' status is direct mortality and loss of genetic integrity resulting from the collection of seeds and entire plants from wild populations (Factor B). The threat of collection potentially imperils all populations whose geographic locations are publicized and accessible to the public. Since we have determined that the species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species, we determine that designation of critical habitat is not prudent for the species.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns and the locations of any additional populations of this species;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Threats and conservation actions affecting the species, including:

(a) Factors that may be affecting the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors;

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species; and

(c) Existing regulations or conservation actions that may be addressing threats to this species.

(3) Additional information concerning the historical and current status of this species.

(4) Information regarding our determination that designating critical

habitat for the big red sage is not prudent.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available, and section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Our final determination may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that the species is threatened instead of endangered, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On June 18, 2007, Forest Guardians (now Wild Earth Guardians) petitioned the Service to list 475 species in the southwestern United States, including big red sage, as endangered or threatened species under the Act. On December 16, 2009, the Service published in the **Federal Register** (74 FR 66866) a partial 90-day petition finding that the petition provided substantial information indicating that the big red sage may warrant listing under the Act. This document constitutes the 12-month finding on the petition to list the big red sage under the Act.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the big red sage. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the big red sage.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review in listing actions under the Act (*https://www.fws.gov/sites/default/files/documents/peer-review-policy-directors-memo-2016-08-22.pdf*), we solicited independent scientific review of the information contained in the big red sage SSA report. We sent the SSA report to four independent peer reviewers and received three responses. Results of this structured peer review process can be found at *https://www.regulations.gov.* In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this proposed rule.

Summary of Peer Reviewer Comments

As discussed above in Peer Review, we received comments from three peer reviewers on the draft SSA report. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the contents of the SSA report. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions, including clarifications in terminology and discussions of genetics and hydrology, and other editorial suggestions. Otherwise, no substantive changes to our analysis and conclusions within the SSA report were deemed necessary, and peer reviewer comments are addressed in version 1.1 of the SSA report.

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of big red sage is presented in the SSA report (version 1.1; Service 2023, pp. 2–11).

Big red sage is a perennial herbaceous plant in the mint family (Lamiaceae) that occurs along streams and narrow ravines in the Edwards Plateau of central Texas. The historical range of the species includes Bandera, Bexar, Comal, Gillespie, Kendall, Kerr, Real, Uvalde, and Wilson Counties. Most big red sage plants occur on bluffs, ledges, and slopes along watercourses and ravines where groundwater slowly seeps through limestone to the surface.

Its long, crimson flowers with purplish bases adorn 5-foot-tall stalks that arise from rosettes of shiny, dark green leaves (Service 2023, p. 2). Big red sage flowers opportunistically from May through November in response to rainfall and the persistence of soil moisture (Service 2023, p. 6). The flowers are specifically pollinated by hummingbirds (Wester 2007, pp. 40, 72; Cibolo Center for Conservation 2021, p. 4); black-chinned hummingbirds (*Archilochus alexandri*) are the most abundant species throughout the range and flowering period of the big red sage (Service 2023, p. 8). Hummingbirds may forage within discrete territories they establish and defend around concentrated nectar sources; alternatively, they may also forage in a more dispersed pattern along traplines, in which rewarding nectar sources are

visited repeatedly in a predictable sequence (Tello-Ramos et al. 2015, pp. 812–813). Trapline foraging behavior has been documented among black-chinned hummingbirds (Arizmendi and Ornelas 1990, p. 177). Based on the trapline forage range of other hummingbird species (Gill 1988, entire), we estimate that black-chinned hummingbirds foraging along consistent, regular routes may cross-pollinate individuals of big red sage that are separated by as much as 0.5 to 1.0 kilometers (km) (0.3 to 0.6 miles (mi)), and thus are important vectors for the species' gene flow. However, the species' fecundity is low, and small, inbred populations produce few viable seeds (Service 2023, p. 9). Individual plants can live at least 10 years, and the rootstocks may branch to form multiple rosettes that appear to be separate individuals; therefore, the effective population sizes may be less than the numbers of individuals counted in censuses (Service 2023, pp. 9–10).

The Texas Parks and Wildlife Department's (TPWD) Texas Natural Diversity Database (TXNDD) maintains geographic and population data of plant and animal species of conservation concern in Texas. Data for each species are organized by standard geographical units for populations and habitats called ''source features'' (SFs) and ''element occurrences'' (EOs). SFs and EOs are geographic locations where a species has been recorded one or more times. They may be displayed as points, lines, or polygons buffered by their estimated geographic precision. SFs may be combined into a single E.O. if they are separated by less than 1 km (0.6 mi) in the wild (NatureServe 2002, p. 26). Therefore, each E.O. may contain one or more SFs. For the big red sage and other plant species of conservation concern, we use the E.O. standard as the unit of analysis because it ensures consistency among all the partners concerned with the conservation and management of a species, and this method involves rigorous scientific investigations spanning many years. We use numbers to identify the EOs for the big red sage, and all EOs are associated with unique identifiers in the TXNDD (Service 2023, pp. 26–27). Big red sage has been documented at 18 EOs (see table 1, below). Please refer to the SSA report for a full list of EOs and their respective SFs for the big red sage (Service 2023, pp. 26–27).

TABLE 1—SUMMARY OF THE EOS OF BIG RED SAGE

[TXNDD ranks each EO as historical (H) or extant (E). Those marked as historical may not have population estimates.]

EO No.	Site name	County	TXNDD rank	Most recent population estimate	Year of most recent survey
1	Barron Creek	Kendall	H		
2	Guadalupe River at Kerrville	Kerr	H	50	1894
3	Verde Creek south of Kerrville	Bandera/Kerr	H		
4	Turtle Creek south of Kerrville	Kerr	E	0	2013
5	Cibolo Creek near Boerne	Kendall	E	170	2013
7	Sutherland Springs	Wilson	H		
8	Frio Waterhole	Kerr	H		
10	Confluence of Bear Creek and Pedernales River	Gillespie	E	0	2013
11	Can Creek and Hale Hollow at Lost Maples State Natural Area	Bandera/Real	E	4	2013
14	Frederick Creek at Interstate 10	Kendall	E	401	2013
15	Big Joshua Creek	Kendall	E	0	2013
16	Wilson Hollow	Real	E	2	1991
19	Comanche Springs on Salado Creek	Bexar	H		
20	North Fork Guadalupe River above Farm to Market Road 1340	Kerr	E	8	2016
21	Blue Hole	Real	E	15	2018
22	Pedernales River at Friedrich Road	Gillespie	E	0	2013
23	South Grape Creek east of Luckenbach	Gillespie	E	0	2013
24	Canyon near Frederick Creek	Kendall	E	54	2013

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species.

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory

definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the Act's definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis, which is further described in the 2009 Memorandum Opinion on the foreseeable future from the Department of the Interior, Office of the Solicitor (M–37021, January 16, 2009; ''M-Opinion,'' available online at *https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37021.pdf*). The foreseeable future extends as far into the future as the U.S. Fish and Wildlife Service and National Marine Fisheries Service (hereafter, the Services) can make reasonably reliable predictions about the threats to the species and the species' responses to those threats. We need not identify the foreseeable future in terms of a specific period of time. We will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat projection timeframes, and environmental variability. In other words, the foreseeable future is the period of time over which we can make reasonably reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess big red sage viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events); and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time, which we then used to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R2–ES–2024–0083 on *https://www.regulations.gov.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. For the big red sage to maintain viability, its populations must be highly resilient with sufficient redundancy and representation. Several factors influence the resiliency of big red sage populations, including: (1) herbivory, (2) land use changes, (3) collection and inappropriate propagation (*i.e.,* breeding in captivity using closely related wild-sourced individuals that results in inbreeding and decreased genetic diversity), and (4) effects from climate change. These resiliency factors and habitat elements are discussed in detail in the SSA report (Service 2023, entire) and are summarized here.

Species Needs

Soil Moisture

Big red sage growth and flowering require the maintenance of soil moisture through rainfall and/or seepage through fissures and cavities in the limestone substrate. Flowering occurs opportunistically from May through November in response to rainfall and the presence of soil moisture (Service 2023, p. 6). Big red sage individuals establish on bluffs, ledges, and slopes along watercourses (including first-order streams) where soil moisture is relatively persistent (Correll and Johnston 1978, p. 1368; Pasztor 2004, p. 1; Poole et al. 2007, p. 437). Big red sage populations most often occur within 165 feet (50 meters) of watercourses and where slopes are greater than 25 percent (Taylor and O'Kennon 2013, pp. 3–5). The species is endemic to the riparian ravines in the Edwards Plateau, and it occurs in specific positions where intermittent seepage occurs. Additionally, portions of EOs appear to obtain moisture from a major aquifer, the Edwards-Trinity or Trinity, at least when aquifer levels are high (Service 2023, pp. 37–38).

Minimum Viable Population

Highly resilient populations of big red sage must also have stable or increasing demographic trends over time. This means that recruitment of new individuals is at least as great as the mortality rate, and populations must be large enough to have a high probability of surviving a prescribed period of time. Species that have more populations distributed over a broader geographic

range have a greater chance of surviving catastrophic events (Shaffer and Stein 2000, pp. 308–310). Species or populations are highly resilient when the probability of persisting 100 years is greater than 90 percent (Mace and Lande 1991, p. 151). This metric of population resilience is called minimum viable population (MVP) (Pavlik 1996, p. 137). We estimate that highly resilient populations have an MVP of at least 1,600 individuals of reproductive age (Service 2023, pp. 32–33). MVP for a species varies based on different traits of that species, including, but not limited to, longevity (*i.e.,* perennial vs. annual), growth form (*i.e.,* woody vs. herbaceous), fecundity, and longevity of seed viability. We determined that the MVP of 1,600 individuals for big red sage based on the specific traits of big red sage, which fall in the moderate range of several of these categories (Pavlik 1996, p. 137). For example, big red sage is perennial, occurs in old-growth vegetation, plants may produce a moderate number of ramets (physically separate but genetically identical individuals) that branch off the original root system, it is herbaceous, has low fecundity, individual survivorship is low, and environmental variation is high (Service 2024, p. 33). Therefore, populations require a moderately high MVP to persist for 100 years.

Individual and Population Connectivity

Small, reproductively isolated populations are susceptible to the loss of genetic diversity, to genetic drift, and to inbreeding (Barrett and Kohn 1991, pp. 3–30). Additionally, the loss of genetic diversity may reduce the ability of a species or population to resist pathogens and parasites, to adapt to changing environmental conditions, or to colonize new habitats (Service 2023, p. 34). Conversely, populations that pass through a genetic bottleneck may subsequently benefit through the elimination of harmful alleles. Nevertheless, the net result of the loss of genetic diversity is likely to be a loss of fitness and lower chance of survival of populations and of the species.

Additionally, the seeds of big red sage have a very limited dispersal range (Service 2023, p. 34). The forage range for the black-chinned hummingbird, an important pollinator of big red sage, determines the typical limits of gene flow between individuals (Service 2023, p. 34). We estimate that this limit may be from 0.5 to 1.0 km (0.3 to 0.6 mi) (Service 2023, p. 34). When the limits of gene flow are unknown, we apply the TXNDD's use of the NatureServe default minimum separation distance of 1.0 km (0.6 mi) to delineate populations (NatureServe 2020, p. 4). Therefore, big red sage populations must have sufficient numbers of individuals and populations that are not too closely related or too widely dispersed for effective pollination, outcrossing, and seed production.

Risk Factors for Big Red Sage

We reviewed the potential risk factors (*i.e.,* threats, stressors) that could be currently affecting the big red sage. In this proposed rule, we will discuss only those factors in detail that could meaningfully impact the status of the species. The primary risk factors (*i.e.,* threats) affecting the status of big red sage are herbivory (Factor C), collection and inappropriate propagation (Factor B), land use changes (Factor A), and effects from climate change (Factor E).

Herbivory

Big red sage is palatable to browsing herbivores, such as white-tailed deer (*Odocoileus virginianus*), introduced ungulates, and goats (*Capra hircus*). Within large portions of the range of the big red sage, the numbers of white-tailed deer are about three times greater than the recommended sustainable deer population levels (Morrow 2020, p. 8; Armstrong and Young 2000, p. 20; Service 2023, p. 36). In addition to native white-tailed deer, several species of nonnative ungulate game animals have been introduced in the Edwards Plateau (Mungall and Sheffield 1994, pp. 188–194). Some introduced ungulates have escaped and established large breeding populations in the wild, compounding the browsing pressure from native white-tailed deer. Additionally, ranchers also introduced large numbers of goats in Real County and elsewhere in the Edwards Plateau beginning in the early 20th century (Minton 2019, unpaginated). Since goats are voracious browsers and nimble scalers of rocky slopes, large numbers of goats likely had a severe impact on populations of big red sage before conservationists began searching for the species.

Browsing from unsustainably large populations of deer has eradicated big red sage from all known habitats except areas that are inaccessible to deer, such as bluffs and steep slopes (Taylor and O'Kennon 2013, p. 10). Herbivory has already resulted in the decline of two of the seven remaining EOs of big red sage (EOs 11 and 14) (Ward 2010, p. 2). Therefore, herbivory, and thus mortality of individual plants, by native and introduced ungulates has severely affected all populations throughout the species' range and is a continuing severe threat throughout the range.

Land Use Changes

Current rates of human population growth are stable or decreasing in Real, Bandera, and Uvalde Counties; increasing moderately in Kerr and Gillespie Counties; and increasing rapidly in Kendall County (Service 2023, pp. 83–84). Although bluffs and steep slopes are not suitable for most forms of land development, many big red sage populations occur near watercourses where human activities are concentrated (Service 2023, p. 30). Construction and maintenance of houses, roads, bridges, and other recreational land uses may impact these populations of big red sage.

All or portions of four EOs (2, 10, 19, 22) have been lost to development or land use changes that altered the native plant community (Taylor and O'Kennon 2013, pp. 6, 8, 9; TXNDD 2019, pp. 3, 4, 15, 16, 35, 36, 43). In these cases, some individuals were likely to have been destroyed when habitats were converted to buildings or pavement, or when nonnative vegetation was introduced in developed areas, while others may have died as a result of other drastic changes to the habitat.

In addition to losses that are directly attributable to urban and residential development, an increase in the amount of impermeable surfaces or a loss of vegetative cover may reduce the infiltration of water into the ground; this in turn may reduce the availability and constancy of seep moisture that sustains big red sage individuals and populations. The drying of these seepage areas may impact big red sage populations because of the reduction of necessary soil moisture for sustaining plant and population growth (Taylor and O'Kennon 2013, pp. 10–11). Three of the remaining seven EOs (EOs 5, 14, and 24) are currently at the greatest risk to development. Based on the extent of land use changes to known populations and current rates of human population growth in the encompassing counties, we estimate that this threat currently affects 25 percent of all extant populations. Therefore, land use changes are a continuing, potentially severe threat throughout the species' range.

Collection From the Wild and the Loss of Genetic Integrity Due to Inappropriate Propagation

Big red sage is used in landscapes and pollinator gardens, both within its native range in Texas as well as throughout North America and elsewhere. It has been propagated and

sold by several commercial nurseries since 1986 (Enquist 1987, p. 5). Seeds and entire plants have been collected from the wild for landscaping and commercial propagation from at least two EOs (14 and 20) that are accessible to the public (Collier 1989, pp. 1–2; Taylor and O'Kennon 2013, p. 11). E.O. 14, the source of at least one propagated population (Hoban and Garner 2019, p. 1), was widely known and easily accessible to the public. In 1988, the State Department of Highways and Public Transportation placed signs at E.O. 14 stating, ''Non Mowing Area,'' ''Wildflower Research Area,'' and ''Property of State of Texas, Penalty for Private Use.'' On June 27, 1989, State Department of Highways and Public Transportation maintenance personnel found the signs pulled out of the ground with cut flowering stems of the big red sage placed on top of them, with evidence of digging and cutting of the plants (Collier 1989, pp. 1–2). Therefore, there is confirmation that collection contributed to the decline of that population, along with other possible causes, including a major flood, competition from invasive plants, and ungulate browsing (Service 2023, p. 10). Other EOs, such as 11 and 21, are vulnerable to collection from the wild; undocumented populations may also have been discovered and depleted by collectors. Although the habitat of E.O. 11 is intact and is in high condition, and the site is protected as a State Natural Area, this population has declined 87 percent over 31 years (Service 2023, pp. 22, 65). This decline can be attributed to illicit collection because the collection sites have been publicized. However, additional factors may have also contributed to this decline, including herbivory by over-abundant white-tailed deer and introduced ungulates, and the demographic and genetic consequences of small population sizes. Because collection and sale of the big red sage has been ongoing for decades, we conclude that collection from wild populations is a potentially severe, continuing threat to all populations that occur in sites that are known to and accessible by the public.

Inappropriate propagation is also a threat to big red sage. Propagation, in general, is a useful tool for plant conservation. However, there are several potential risks if conducted without regard for the conservation of a species' genetic integrity. Propagated plant populations often arise from a very small number of founders collected from the wild, and propagated populations may lose alleles, and thus experience a decline in genetic diversity through genetic drift (the random reduction in frequency of alleles or the complete loss of alleles). Genetic drift occurs most rapidly when the number of breeding individuals is small.

Additionally, propagated populations may also experience a decrease in genetic diversity through deliberate or inadvertent selection. Selection leads to non-random changes in allele frequencies and non-random losses of alleles. Deliberate selection occurs when seeds are selected from plants with specific desirable traits, such as size, form, or flower color, and are used to propagate subsequent generations. Inadvertent selection occurs as an unintended consequence of propagation. For example, growers typically retain only the individuals that germinate readily and then use those individuals as future seed sources; consequently, propagated populations frequently lose the seed dormancy mechanisms that benefit the survival of wild populations. Each successive propagated generation incrementally changes the frequencies of alleles in the gene pool, including the complete loss of alleles. Ultimately, both deliberate and inadvertent selection lead to plants that are more fit in cultivation but less likely to persist if transplanted back into the wild (Service 2023, p. 39).

Through propagation, it is possible to create unlimited numbers of individuals that, once released to the wild, may interbreed with and overwhelm the much smaller wild populations with a very narrow sample of the species' original genetic diversity, thus causing the loss of rare wild genotypes. Release of individuals bred in cultivation may also introduce genes that reduce fitness (*e.g.,* loss of seed dormancy) into the wild population, as discussed above. Finally, horticulturalists and plant collectors may bring big red sage into proximity with other *Salvia* species that are geographically separated in the wild; if these taxa can breed with each other, this could lead to hybridization. An escape of hybridized *Salvia* species into the wild populations could lead to the extinction of the original wild genotype through interbreeding.

We have no evidence that the progeny of propagated individuals of big red sage have colonized wild population sites. Nevertheless, propagated big red sage populations have very low genetic diversity (Hoban and Garner 2019, p. 4). We conclude that inappropriate propagation is a potentially severe threat of unknown extent to the genetic integrity of the remaining wild populations and the species.

Effects From Climate Change

The Summary for Policy Makers in the Sixth Assessment Report of the Intergovernmental Panel on Climate Change concluded that global surface temperatures will continue to increase until at least the mid-century under all emissions scenarios considered; the frequency and intensity of hot extremes, marine heatwaves, and agricultural and ecological droughts will increase in some regions; and heavy precipitation events will become more frequent (IPCC 2021, pp. 16–20). The U.S. Global Climate Research Program (USGCRP) Fourth National Climate Assessment reports that average annual temperatures from 1986 to 2016 have increased in the Southern Great Plains, which includes the range of big red sage, by 0.42 degrees Celsius (°C) (0.76 degrees Fahrenheit (°F)), compared to the 1901 to 1960 baseline (USGCRP 2017, p. 187). The frequency of heavy precipitation events in the Southern Great Plains has increased from 1901 to 2016 and 1948 to 2016 (USGCRP 2017, pp. 20 –212) and is projected to continue to increase under both moderate and high emission scenarios.

Because the big red sage only occurs where there is seep moisture along the slopes and bluffs of canyons and ravines, it requires relatively persistent soil moisture. Additionally, to evaluate how a changing climate may affect big red sage, we used the National Climate Change Viewer to compare past and projected future climate conditions for the Upper Guadalupe River watershed in Texas. The National Climate Change Viewer projects a decrease in soil water storage and an increase in summer evaporative deficit by 2050 to 2074, indicating that soil moisture will become more limiting to plant growth, and thus will restrict the big red sage to a smaller amount of suitable habitat (Service 2023, p. 42). Although climate models do not consistently project how total rainfall may change, the ongoing trend toward greater extremes in rainfall will likely increase with rising temperatures. We expect that mortality will increase and recruitment will decrease during longer, more severe droughts. Furthermore, the increasing frequency and intensity of heavy rainfall events will also exacerbate the threat of flash flooding. Flash floods have already caused population declines at EOs 5 and 14, and EO 15 was completely destroyed by a landslide when the bluff above it collapsed, which may have been caused by flooding along Big Joshua Creek. Flood waters may uproot individual plants or wash away their substrates, or the plants may be buried under silt and

debris (Service 2023, p. 40). Many EOs that occur along watercourses have individuals established below the high-water level that will likely be destroyed by a flood event at some point in the future (Taylor and O'Kennon 2013, p. 10). We conclude that the direct and indirect effects of climate change and associated flash floods and bank erosion represent a potentially severe threat to the portions of big red sage populations that are close to watercourses and below the high-water level of floods throughout the species' range.

Summary

Several historical and ongoing influences, including herbivory, land use changes, collection, and inappropriate propagation, may affect the viability of the big red sage. The most pervasive threats to the species are herbivory and collection, which have already resulted in the extirpation and decline of several populations. Additionally, climate change is expected to exacerbate impacts from all aforementioned threats.

Conservation Efforts and Regulatory Mechanisms

TPWD has previously supported two grants that promoted the conservation of the big red sage. The 2012 Texas Conservation Action Plan identified a research priority to study the distribution of and threats to the big red sage. This led to a wildlife conservation grant to update the species' status (Taylor and O'Kennon 2013, entire). The TPWD Conservation License Plate Program supported an investigation of the species' conservation genetics in 2019 (Hoban and Garner 2019, pp. 1–2). This genetic study was conducted at EO 11 located at Lost Maples State Natural Area, which is protected by TPWD. Although the habitat is intact and the site is protected as a State Natural Area, this population has declined 87 percent over 31 years. Factors that may have contributed to this decline include herbivory by overabundant white-tailed deer and introduced ungulates, as well as the demographic and genetic consequences of a small population size. Since the collection sites have been publicized, it is also possible that illicit collection may also have contributed to this decline. TPWD is currently supporting a third project, funded through the Service's cooperative endangered species conservation fund (see 16 U.S.C. 1535(i)). The objectives of this project are to seek access to private lands and conduct surveys for new populations, collect seeds from wild populations, and propagate seeds of wild populations to increase seed available for reintroduction and augmentation of populations, scientific research, and seed banking.

One of the largest populations of the big red sage occurs at Cibolo Bluffs (EO 5), which is owned by Cibolo Center for Conservation and is monitored annually by volunteers of the Cibolo Center for Conservation and trustees of Cibolo Preserve. In 2005, there was a big red sage reintroduction at Cibolo Center for Conservation (formerly Cibolo Nature Center) from seeds obtained from the Lady Bird Johnson Wildflower Center and collected from the wild (likely Cibolo Bluffs). Results from this reintroduction suggest that the big red sage may be relatively resilient to the wide extremes in annual rainfall that characterize the Edwards Plateau (Service 2023, p. 46). However, none of the individuals that were planted outside of exclosures survived, indicating that herbivory by overabundant white-tailed deer is a severe threat to the survival of the big red sage. While the protected individuals declined over time, they also produced large numbers of seeds, with new big red sage individuals found growing nearby along a creek in 2013. In summary, this small pilot reintroduction demonstrates that it is possible to establish new population sources or to augment existing populations, provided that the sites are protected from white-tailed deer and other ungulates.

Cumulative Effects

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

Species Condition

We used the U.S. Geological Survey's hydrologic unit code watershed boundaries to delineate four representation areas of the big red sage: Guadalupe, Cibolo, Frio-Sabinal, and Pedernales. The current condition of the big red sage considers the risks to the populations previously and currently. For each EO, we developed and assigned categories for the species' demographic and habitat conditions to measure population resiliency of the big red sage. Our analysis was conducted at the EO level, but some individual SFs may have different conditions than the EO in which it falls.

Seven EOs (EO numbers 5, 11, 14, 16, 20, 21, and 24) are extant and seven EOs (EO numbers 2, 4, 10, 15, 19, 22, and 23) are extirpated (Service 2024, p. 50). There are 4 EOs that were reliably recorded in the past for which there have been no recent visits, or the exact geographic location is unknown (EO numbers 1, 3, 7, and 8). We considered these previously documented populations where we could not determine if they are currently extant or extirpated as ''non-contributing'' (*i.e.,* not contributing to the overall viability of the species), and they are not included in the overall condition assessment of the species. Therefore, we consider there to be 14 known historical populations contributing to our understanding of the overall viability of the species.

We used MVP as the metric to determine the population condition (*i.e.,* resiliency) for each EO (Pavlik 1996, p. 137). MVP is an estimate of population size needed for a population to have a high probability of surviving 100 years, which for the big red sage is 1,600 individuals (Service 2023, p. 33). The estimate of MVP is based only on numbers of mature individuals (those that have flowered at least once or are judged capable of flowering) because juveniles that die before they reproduce do not contribute to the effective population size or future genetic diversity.

We categorized the population condition of each EO as high, moderate, low, or extirpated. EOs are in high condition when they have the estimated MVP of 1,600 mature individuals, meaning the populations would likely persist for 100 years. Moderate condition is a population of at least 100 individuals, which is a population size that is likely to persist for at least 10 years and has the ability to have increased resiliency through conservation and management. We adopt 10 years as the threshold for moderate condition because 10 years is the observed lifespan of an individual and it is long enough for both recruitment and mortality to occur and for demographic trends to emerge (Taylor 2021, pers. comm.). Low condition is a population size fewer than 100 individuals that is not likely to persist 10 years and is unlikely to increase resilience without

augmentation as well as conservation and management.

The evaluation of habitat conditions of the EOs includes the amount and percent of good and excellent habitat, the presence of gaps between areas of good or excellent habitat, the proximity of urban and residential development, and the abundance of forested ravines and tributaries that connect to the EOs (Service 2023, p. 54). High habitat condition was categorized by having, on average, abundant potential habitat, few (if any) significant habitat gaps, low proximity to or absence of nearby urban and residential development, and abundant tributary ravines. Moderate habitat condition was categorized by having, on average, relatively abundant potential habitat, large or several gaps between suitable habitat areas, some proximity to urban and residential development, and few forested ravines and tributaries. Low habitat condition was categorized by having, on average, low amounts of potential habitat, many or large significant habitat gaps, large amounts or very nearby urban and residential development, and few to no nearby forested ravines and tributaries. We categorized the overall condition of each EO as the lesser of the population condition and habitat condition (see table 2, below). There are several populations that were reliably recorded in the past for which there have been no recent visits, or the exact geographic location is unknown. We considered these previously documented populations where we could not determine if they are currently extant or extirpated as ''non-contributing'' (*i.e.,* not contributing to the overall viability of the species), and they are not included in the overall condition assessment of the species.

TABLE 2—SUMMARY OF REPRESENTATION AREAS, POPULATION AND HABITAT CONDITIONS, AND OVERALL RESILIENCE OF THE EOS OF BIG RED SAGE

Representation area	Element occurrence	Population condition	Habitat condition	Overall EO resilience
Guadalupe or Pedernales	1	Non-Contributing	Not Determined	Non-Contributing.
Guadalupe	2	Extirpated	Developed	Extirpated.
Guadalupe	3	Non-Contributing	Not Determined	Non-Contributing.
Guadalupe	4-Upper Turtle Creek	Non-Contributing	High	Non-Contributing.
Guadalupe	4-Middle Turtle Creek	Non-Contributing	Low	Non-Contributing.
Guadalupe	4-Lower Turtle Creek	Extirpated	Low	Extirpated.
Guadalupe	15	Extirpated	Not Determined	Extirpated.
Guadalupe	20	Moderate	High	Moderate.
Unknown	7	Non-Contributing	Unknown	Non-Contributing.
Cibolo	5-Upstream Cibolo Creek	Non-Contributing	High	Non-Contributing.
Cibolo	5-Midstream Cibolo Creek	Non-Contributing	Moderate	Non-Contributing.
Cibolo	5-Downstream Cibolo Creek.	Moderate	High	Moderate.
Cibolo	14	Moderate	Moderate	Moderate.
Cibolo	24	Moderate	Moderate	Moderate.
Frio-Sabinal	8	Non-Contributing	High	Non-Contributing.
Frio-Sabinal	11	Low	High	Low.
Frio-Sabinal	16	Low	High	Low.
Frio-Sabinal	21	Low	High	Low.
Pedernales	10	Extirpated/Non-Contributing.	Not Determined	Extirpated/Non-Contributing.
Pedernales	22	Extirpated	Not Determined	Extirpated.
Pedernales	23	Extirpated	Not Determined	Extirpated.
Headwaters Salado Creek	19	Extirpated	Developed	Extirpated.

The species' total known populations have declined by 46 percent since 1988. Twenty-eight percent of known EOs have been completely extirpated. All known EOs in the Pedernales representation area are extirpated. The Guadalupe representation area has only one remaining E.O., which is in moderate condition. The Frio-Sabinal representation area has three EOs, all of which are in low condition. The Cibolo representation area has three EOs in moderate condition that are currently isolated, or nearly isolated, from each other by urban, residential, and recreational development.

Redundancy for the big red sage is characterized by having multiple, sufficiently resilient populations distributed across the spring systems historically occupied by the species for the species to be able to withstand catastrophic events. Species that have redundant, sufficiently resilient populations distributed across their historical ranges are less susceptible to the risk of extinction from catastrophic events. Of the 14 known historical populations of big red sage, 7 have become extirpated. Therefore, redundancy has been significantly reduced from historical levels, making the species more vulnerable to catastrophic events such as flash floods and prolonged drought.

Representation reflects a species' capacity to adapt to changing environmental conditions over time and can be characterized by genetic and ecological diversity within and among populations. We describe species representation for the big red sage as genetic diversity both within and among populations. Current populations of big red sage have very low overall species diversity and small population sizes and are likely to continue to experience declines in genetic diversity and increased inbreeding (Hoban and Garner 2019, pp. 3–4). Although the big red sage has critically low genetic diversity, wild populations maintain greater genetic diversity than propagated populations (Hoban and Garner 2019, pp. 3–4). When coupled with small population sizes, big red sage populations may experience an increased loss in genetic variation, resulting in a population's reduced ability to survive and reproduce (*i.e.,* inbreeding depression) (Hoban and Garner 2019, p. 4). The big red sage occurs only in small, isolated groups of individuals, which are susceptible to the loss of genetic diversity, to genetic drift, and to inbreeding (Barrett and

Kohn 1991, pp. 3–30). This is evident in propagated populations of big red sage with known low genetic diversity that did not produce viable seeds (Hoban and Garner 2019, p. 4). Because of the species' low genetic diversity, its ability to withstand stochastic events and adapt to changing environmental conditions is reduced.

In summary, of the 14 known historical populations, 7 are extirpated and 7 are extant. This reduced redundancy makes the species more susceptible to catastrophic events such as floods and prolonged drought. Furthermore, of the extant populations, only four populations are expected to persist at least 10 years and three populations are likely to become extirpated within 10 years. The remaining populations are small, are isolated, and have low genetic diversity, making them less able to withstand stochastic events.

As part of the SSA, we also developed two future condition scenarios to capture the range of uncertainties regarding future threats and the projected responses by the big red sage. Because we determined that the current condition of the big red sage is consistent with an endangered species (see Determination of the Big Red Sage's Status, below), we are not presenting the results of the future scenarios in this proposed rule. Please refer to the SSA report (Service 2023, pp. 78–98) for the full analysis of future scenarios.

Determination of the Big Red Sage's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we find that the big red sage has declined from known historical levels in size and number of populations. Our analysis revealed several factors that caused this decline and pose a meaningful risk to the viability of the species. These threats are primarily related to habitat changes (Factor A), including land use changes; overutilization (Factor B) by collection and inappropriate propagation; herbivory (Factor C); and the effects of climate change (Factor E).

Of the 14 known historical populations, 7 are extirpated and 7 are extant. This decline in number of populations from known historical levels indicates a reduced level of redundancy, making the big red sage more vulnerable to catastrophic events such as flash floods. Of the seven extant populations, only four populations are expected to persist at least 10 years and three are likely to become extirpated within 10 years. These levels of resiliency of the remaining populations exhibit a lowered ability of the species to withstand environmental and demographic stochasticity. Additionally, overall genetic diversity of the species is low, meaning that the species may not be adequately able to adapt to both near-term and long-term changes in its physical and biological environment (*i.e.,* the species may lack adaptive capacity).

The most pervasive threats to the species are herbivory and collection and inappropriate propagation. Browsing from unsustainably large populations of deer has eradicated big red sage from all known habitats except areas that are inaccessible to deer, such as bluffs and steep slopes (Taylor and O'Kennon 2013, p. 10). Herbivory has already resulted in the decline of several EOs of big red sage, including EOs 11 and 14 (Ward 2010, p. 2). Seeds and entire plants have been collected from the wild for landscaping and commercial propagation from at least two EOs (14 and 20) that are accessible to the public (Collier 1989, pp. 1–2; Taylor and O'Kennon 2013, p. 11). E.O. 14 was widely known and easily accessible to the public, and collection contributed to the decline of that population, which remains extant.

These threats, in addition to land use changes and effects from climate change, have reduced available habitat for the big red sage and resulted in the direct and indirect destruction of individual plants and entire populations. All or portions of four EOs have been lost to development or land use changes where individual plants were likely to have been destroyed when habitats were converted to buildings or pavement, or when nonnative vegetation was introduced in developed areas, while others may have died as a result of other drastic changes to the habitat (Taylor and O'Kennon 2013, pp. 6, 8, 9; TXNDD 2019, pp. 3, 4, 15, 16, 35, 36, 43). Effects from climate change such as flash floods have already caused population declines at three EOs, one of which was completely destroyed. Flood waters may uproot individual plants or wash away their substrates, or the plants may be buried under silt and debris (Service 2023, p. 40).

In summary, the big red sage is very susceptible to extirpations from catastrophic events and has limited adaptive capacity. The number of known populations has already been reduced from 14 to 7 populations due to herbivory, collection and inappropriate propagation, land use changes, and effects from climate change, all of which remain active threats to existing populations. The species is in danger of extinction due to the aforementioned threats, which have historically impacted, and are currently impacting, the species and reducing its viability across its range. We do not find the species meets the Act's definition of a threatened species because the species has already shown declines in the number and resiliency of populations. Half of known populations have already become extirpated due to the threats mentioned above, and all remaining populations are at risk due to the same threats. Because current redundancy is reduced from known historical levels, and representation is limited due to low genetic diversity, the species is vulnerable to catastrophic and stochastic events. Thus, after assessing the best scientific and commercial data available, we determine that the big red sage is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. We have determined that the big red sage is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the big red sage warrants listing as endangered

throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020), because that decision related to significant portion of the range analyses for species that warrant listing as threatened, not endangered, throughout all of their range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the big red sage meets the Act's definition of an endangered species. Therefore, we propose to list the big red sage as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, foreign governments, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/program/endangered-species*), or from our Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Texas would be eligible for Federal funds to implement management actions that promote the protection or recovery of the big red sage. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Although the big red sage is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7 of the Act is titled, ''Interagency Cooperation,'' and it mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the Federal action is likely to result in jeopardy or adverse modification.

In contrast, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. Although the conference procedures are required only when an action is likely to result in jeopardy or adverse modification, action agencies may voluntarily confer with the Service on actions that may affect species proposed for listing or critical habitat proposed to be designated. In the event that the subject species is listed or the relevant critical habitat is designated, a conference opinion may be adopted as a biological opinion and serve as compliance with section 7(a)(2) of the Act.

Examples of discretionary actions for the big red sage that may be subject to conference and consultation procedures under section 7 are land management or other landscape-altering activities on Federal lands as well as actions on State, Tribal, local, or private lands that require a Federal permit (such as a

permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service Field Office (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions on section 7 consultation and conference requirements.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered plants. The prohibitions of section 9(a)(2) of the Act, and the Service's implementing regulations codified at 50 CFR 17.61, make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed any of the following with an endangered plant: (1) import to, or export from, the United States; (2) remove and reduce to possession from areas under Federal jurisdiction; maliciously damage or destroy on any such area; or remove, cut, dig up, or damage or destroy on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law; (3) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity; or (4) sell or offer for sale in interstate or foreign commerce. Certain exceptions to these prohibitions apply to employees or agents of the Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Service regulations governing permits for endangered plants are codified at 50 CFR 17.62, and general Service permitting regulations are codified at 50 CFR part 13. With regard to endangered plants, a permit may be issued for scientific purposes or for enhancing the propagation or survival of the species. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

II. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that each Federal action agency ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of designated critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R.

5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered species or a threatened species. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat may not be prudent in circumstances such as, but not limited to, the following:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States; or

(iv) No areas meet the definition of critical habitat.

As discussed above, big red sage is threatened by collection and inappropriate propagation, and identification of critical habitat can be expected to increase the degree of these threats to the species. Because of this, we have determined that designation of critical habitat is not prudent. We reach this conclusion largely because of the pervasive threat of collection (Factor B). The threat of collection potentially imperils all populations whose geographic locations are publicized and accessible to the public. Collection results in direct mortality when whole plants are removed from wild sites, and seed collection from wild populations for propagation can reduce recruitment of new individuals and contribute to the decline of those populations. What remains is a very small number of isolated fragments of former populations, none of which have viable population sizes. Designation of critical habitat would publicize locations of the big red sage that are not currently publicized, which puts those populations at risk for collection and thus extirpation. Designation of critical habitat would also not provide any additional conservation benefit to the species because it does not establish specific land management standards or prescriptions and only prohibits Federal agencies from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat, whereas big red sage occurs almost entirely on private land. Therefore, a designation of critical habitat would not be advantageous for this species. Since we have determined that the big red sage is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species, in accordance with 50 CFR 424.12(a)(1), we determine that designation of critical habitat is not prudent for the big red sage.

Required Determinations

Clarity of the Rule

We are required by Executive Orders (E.O.s) 12866 and 12988 and by the Presidential memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951, May 4, 1994), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), the President's memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation; 87 FR 74479, December 5, 2022), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes and Alaska Native Corporations (ANCs) on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust

Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that the big red sage does not occur on Tribal lands, so no Tribes would be affected if we list the species.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Austin Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.12, in paragraph (h), amend the List of Endangered and Threatened Plants by adding an entry for ''*Salvia pentstemonoides*'' in alphabetical order under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
		FLOWERING PLANTS		
*	*	*	*	*
Salvia pentstemonoides	big red sage	Wherever found	E	[**Federal Register** citation when published as a final rule].
*	*	*	*	*

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2025–01117 Filed 1–17–25; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2024–0127; FXMB1231099BPP0–245–FF09M32000]

RIN 1018–BH65

Migratory Bird Hunting; Proposed 2025–26 Migratory Game Bird Hunting Regulations (Preliminary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes to establish hunting regulations for certain migratory game birds for the 2025–26 hunting season. Through an annual rulemaking process, we prescribe outside limits (which we refer to as frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, describes the proposed regulatory alternatives for the 2025–26 general duck seasons, and provides preliminary proposals that vary from the 2024–25 hunting season regulations. Migratory bird hunting seasons provide opportunities for recreation and sustenance; aid Federal, State, and Tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

DATES: *Comments:* You may comment on the general duck season regulatory alternatives, the process for authorizing annual hunting seasons, and other preliminary proposals for the 2025–26 season until February 20, 2025.

ADDRESSES: *Comments:* You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2024–0127.
- *U.S. mail:* Public Comments Processing, Attn: FWS–HQ–MB–2024–0127; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will not accept emailed or faxed comments. We will post all comments on *https://www.regulations.gov.* This generally means that your entire submission—including any personal identifying information—will be posted on the website. See Public Comments, below, for more information.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–2606; *jerome_ford@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. For a summary of the proposed rule, please see the ''rule summary document'' in docket FWS–HQ–MB–2024–0127 on *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Process for Establishing Annual Migratory Game Bird Hunting Regulations

Background

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when ''hunting, taking, capture, killing,

possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg'' of migratory game birds can take place, and to adopt regulations for this purpose (16 U.S.C. 704(a)). These regulations are written after giving due regard to ''the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds'' (16 U.S.C. 704(a)) and are updated annually. This responsibility has been delegated to the Service as the lead Federal agency for managing and conserving migratory birds in the United States. However, migratory bird management is a cooperative effort of Federal, State, and Tribal governments.

The Service annually develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season dates, season lengths, shooting hours, bag and possession limits, and areas where migratory game bird hunting may occur. These frameworks are necessary to allow harvest at levels compatible with migratory game bird population status and habitat conditions. After the frameworks are established, States may select migratory game bird hunting seasons within the frameworks. States may always be more conservative in their selections than the frameworks, but never more liberal. The annual process of developing migratory game bird hunting regulations concludes when we establish the State season selections as Federal regulations under 50 CFR part 20, subpart K.

Acknowledging regional differences in hunting conditions, the Service has administratively divided the United States into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State within the Flyway, as well as Provinces in Canada that share migratory bird populations with the Flyway. The Flyway Councils, established through the Association of Fish and Wildlife Agencies, also assist in researching and providing migratory game bird management information for Federal, State, Tribal, and Provincial governments, as well as private conservation entities and the general public.

Overview of the Rulemaking Process

The process for adopting migratory game bird hunting regulations, which are set forth at 50 CFR part 20, is constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the biological cycle of migratory game birds controls the timing of data-gathering activities and thus the dates on which these results are available for consideration and deliberation.

For the regulatory cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, condition of breeding and wintering habitat, number of hunters, and anticipated harvest.

Service Migratory Bird Regulations Committee Meetings

The Service Migratory Bird Regulations Committee (SRC) conducted an open meeting on May 17, 2024, to discuss preliminary issues for the 2025–26 regulations and will conduct another meeting in fall 2024 to review information on the current status of migratory game birds and develop recommendations for the 2025–26 hunting regulations for these species. In accordance with 50 CFR 20.153, these meetings are open to public observation, and observers may submit written comments to the Service on the matters discussed. These meetings are announced in the **Federal Register** or online on the Service's Migratory Bird Program website at *https://www.fws.gov/event/us-fish-and-wildlife-service-migratory-bird-regulations-committee-meeting* at least 2 weeks before the meeting date.

Rulemaking Process for the 2025–26 Season

This document is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. This document announces our intent to establish open hunting seasons for certain designated groups or species of migratory game birds for 2025–26 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of 50 CFR part 20, subpart K. For the 2025–26 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, and gallinules); and Scolopacidae (woodcock and snipe).

The proposed regulatory alternatives for the 2025–26 duck hunting seasons are contained at the end of this document. We will publish additional proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available. We annually publish definitions of flyways and management units and a description of the data used in and the factors affecting the regulatory process. This information will be included in proposed and final rules later in the regulations-development process (see 89 FR 41522, May 13, 2024, for the latest definitions and descriptions). Major steps in the 2025–26 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates. Our goal is to publish final regulatory alternatives for duck seasons and proposed season frameworks in winter 2024 and final season frameworks in spring 2025.

Subject Matter Organization

Sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
   - A. General Harvest Strategy
   - B. Regulatory Alternatives
   - C. Zones and Split Seasons
   - D. Special Seasons/Species Management
   - i. Early Teal Seasons
   - ii. Early Teal/Wood Duck Seasons
   - iii. Black Ducks
   - iv. Canvasbacks
   - v. Pintails
   - vi. Scaup
   - vii. Mottled Ducks
   - viii. Wood Ducks
   - ix. Eastern Mallards
   - x. Youth and Veterans–Active-Military-Personnel Hunting Days
   - xi. Mallard Management Units
   - xii. Other
2. Sea Ducks
3. Mergansers
4. Canada Geese
   - A. Special Early Seasons
   - B. Regular Seasons
   - C. Special Late Seasons
5. White-fronted Geese
6. Brant

7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Doves
17. Alaska
18. Hawaii
19. Puerto Rico
20. Virgin Islands
21. Falconry
22. Other

This and subsequent documents will refer only to numbered items requiring attention at the time of publication. Because this and other documents will omit those items not requiring attention, the remaining numbered items may be discontinuous and the list may appear incomplete.

Potential New Process for Authorizing Annual Hunting Seasons

For subsequent documents concerning the 2025–26 hunting regulations for certain migratory game birds, we may publish the remaining proposed and final rulemaking documents as we have done for many years (*i.e.,* by following the current rulemaking process). However, to improve the regulations development process, we are considering a new approach that would be based on a change in our administrative process. In the Spring 2024 Unified Agenda of Regulatory and Deregulatory Actions (see *https://www.reginfo.gov*), we announced that we are developing this new process, which would be published as a proposed rule under RIN 1018–BI04.

In brief, the new approach would involve codifying in regulations a new administrative process and our current provisions that change infrequently. By placing these provisions in regulations, we would no longer need to go through annual rulemaking to authorize annual migratory game bird hunting seasons. In the future, we would engage in rulemaking only when we have determined that changes to specific provisions in our regulations are appropriate and necessary.

We expect this new direction for our administrative process to increase efficiency, better meet State, Tribal, and Federal rulemaking constraints, and reduce complexity and costs in the promulgation of annual migratory game bird hunting regulations. Our goal is to better serve State and Tribal partners and the hunting public while continuing to meet the legal requirements of the Administrative Procedure Act (5 U.S.C. 551–559) and the conservation purposes of the MBTA. By eliminating annual rulemaking, the Service would save about $80,000 per year in printing costs, reduce staff workload by about 1,700 hours, reduce managerial workload of reviewing and surnaming documents by about 200 hours, and allow Federal limits to be established in the spring versus in the late summer, thereby providing States and Tribes more time for developing their annual regulations.

A National Hunting Regulations Working Group has been established that includes representatives from all four Flyway Councils to help develop and review this potential new process.

Tribal Regulations

As part of our effort to improve the annual rulemaking process, we published a final rule for migratory game bird hunting regulations on certain Federal Indian reservations and ceded lands on September 1, 2023 (88 FR 60375). Tribal migratory bird hunting regulations include guidelines for Tribes that want to establish migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands through their own rulemaking process. Tribes are not required to submit a proposal to the Service for our review and approval. We established these regulatory guidelines in response to Tribal requests for our recognition of their reserved hunting rights, recognition of their Tribal sovereignty, and, for some Tribes, recognition of their authority to regulate hunting by both Tribal and nontribal members throughout their reservations. For inquiries on Tribal guidelines, Tribes should contact the address indicated under **FOR FURTHER INFORMATION CONTACT**.

Public Comments

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding this proposed rule. We seek information and comments on the proposed regulatory alternatives for the 2025–26 general duck hunting seasons, other recommended changes or specific preliminary proposals that vary from the 2024–25 regulations, and issues requiring early discussion, action, or the attention of the States.

The Service believes that a 30-day comment period is warranted for this proposed rule, as subsequent **Federal Register** documents will allow the public to submit comments on the overall hunting frameworks (see *Schedule of Biological Information Availability, Regulations Meetings, and Federal Register Publications for the 2025–26 Hunting Season* at the end of this proposed rule for further information). For each subsequent proposed rule associated with this rulemaking action, we will establish a specific comment period. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments we receive. We will summarize the comments received and publish responses to all proposals and written comments when we develop final frameworks for the 2025–26 season. Such comments, and any additional information we receive, may lead to final regulations that differ from the proposed rules.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. Finally, we will not consider mailed comments that are not postmarked by the date specified in **DATES**. We will post all comments in their entirety—including your personal identifying information—on *https://www.regulations.gov.* Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Required Determinations

National Environmental Policy Act (NEPA) Consideration

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual

framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2024–25,'' with its corresponding 2024 finding of no significant impact.

Endangered Species Act Consideration

Before issuance of the 2025–26 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531–1543), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or adversely modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of the ESA may cause us to change proposals in future supplemental proposed rulemaking documents.

Regulatory Planning and Review—Executive Orders 12866, 13563, and 14094

Executive Order (E.O.) 14094 reaffirms and amends the principles of E.O. 12866 and E.O. 13563. E.O. 13563 emphasizes that regulations must be based on the best available science. The rulemaking process must allow for public participation and an open exchange of ideas; promote predictability and reduce uncertainty; identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends; take into account benefits and costs, both quantitative and qualitative; and ensure that regulations are accessible, consistent, written in plain language, and easy to understand. E.O. 14094 states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest and advance statutory objectives. As practicable and appropriate and to the extent permitted by law, regulatory analysis shall recognize distributive impacts and equity. To the extent practicable and consistent with applicable law, regulatory actions should be informed by input from interested or affected communities; State, local, territorial, and Tribal officials and agencies; interested or affected parties in the private sector and other regulated entities; those with expertise in relevant disciplines; and the public as a whole. We have developed this proposed rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and reaffirmed and amended by 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. This action is a ''significant regulatory action,'' as defined under section 3(f)(1) of E.O. 12866 (58 FR 51735, October 4, 1993), as amended by E.O. 14094 (88 FR 21879, April 11, 2023).

An economic analysis was prepared for the 2025–26 migratory bird hunting season. This analysis was based on data from the 2011 and the 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (National Survey), the most recent years for which data are available. See discussion under Required Determinations, *Regulatory Flexibility Act,* below. This analysis estimated consumer surplus for four alternatives for hunting regulations. As defined by OMB in Circular A–4, consumers' surplus is the difference between what a consumer pays for a unit of a good or service and the maximum amount the consumer would be willing to pay for that unit. The duck hunting regulatory alternatives are (1) not opening a hunting season, (2) issuing restrictive regulations that allow fewer days than the 2024–25 season, (3) issuing moderate regulations that allow more days than in Alternative 2 but fewer days than the 2024–25 season, and (4) issuing liberal regulations that allow days similar to the 2024–25 season. The estimated consumer surplus associated with liberal regulations issued for the 2024–25 season across all flyways was $606 million to $797 million (2023$). We also chose Alternative 4 (liberal regulations) for the 2009–10 through 2023–24 seasons. The 2025–26 analysis is part of the record for this rulemaking action and is available at *https://www.regulations.gov* at Docket No. FWS–HQ–MB–2024–0127.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities, such as restaurants, grocery stores, lodging, transportation, and sporting goods stores, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis was prepared to analyze the economic impacts of the annual hunting regulations on small business entities. This analysis is updated annually. The primary source of information about hunter expenditures for migratory game bird hunting is the National Survey, which is generally conducted at 5-year intervals. The 2022 National Survey did not collect migratory bird expenditure data, so the 2025–26 migratory bird hunting season analysis is based on the 2011 and 2016 National Surveys and the U.S. Department of Commerce's County Business Patterns, from which it is estimated that migratory bird hunters will spend approximately $2.6 billion (2023$) at small businesses during the 2025–26 migratory bird hunting season. In summary, this proposed rule would have a significant beneficial economic impact on small entities. Without these annual regulations, States cannot establish migratory bird hunting seasons. A wide range of businesses and individuals benefit economically from the establishment of the annual migratory bird hunting regulations. The initial regulatory flexibility analysis can be found in the economic analysis of the migratory game bird hunting regulations for the 2025–26 season. Copies of the economic analysis are available upon request from the person listed above under **FOR FURTHER INFORMATION CONTACT** or from *https://www.regulations.gov* at Docket No. FWS–HQ–MB–2024–0127.

Clarity of the Rule

We are required by E.O. 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Paperwork Reduction Act

This proposed rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has

previously approved the information collection requirements associated with migratory bird surveys and the procedures for establishing annual migratory bird hunting seasons under the following OMB control numbers:

- 1018–0019, ''North American Woodcock Singing Ground Survey'' (expires 02/28/2027).
- 1018–0023, ''Migratory Bird Surveys, 50 CFR 20.20'' (expires 05/31/2026). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.
- 1018–0171, ''Establishment of Annual Migratory Bird Hunting Seasons, 50 CFR part 20'' (expires 10/30/2027).

You may view the information collection request(s) at *https://www.reginfo.gov/public/do/PRAMain.* 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.,* that this proposed rulemaking does not include any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted for inflation) in any 1 year and does not significantly or uniquely affect small governments.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rulemaking will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Takings Implication Assessment—Executive Order 12630

In accordance with E.O. 12630, this proposed rule, authorized by the MBTA, does not have significant takings implications and does not affect any constitutionally protected property rights. This proposed rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this proposed rule would allow hunters to exercise otherwise unavailable privileges and, therefore, reduces restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

E.O. 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. While this proposed rule is a significant regulatory action under E.O. 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy and has not been designated by OIRA as a significant energy action. Therefore, no statement of energy effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes with respect to impacts to Tribes' treaty rights to hunt waterfowl. We have determined that there are de minimis effects on Indian Tribes for that aspect of their treaty rights. Through this process to establish annual hunting regulations, we regularly coordinate with Tribes that are affected by this proposed rulemaking action. Tribes have the opportunity to attend spring and fall flyway meetings, provide comments on **Federal Register** publications concerning migratory bird hunting, and, whenever needed, we hold informal consultations with Tribes regarding trust resources, trust assets, health, and safety. Also, while streamlining the migratory bird hunting regulation process, four informational webinars were held to present the new process to Tribes, giving Tribes the opportunity to provide input and to ask questions about the Tribal migratory bird hunting regulations. This proposed rule would not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule is general in nature and does not directly affect any specific Tribal lands, treaty rights, or Tribal trust resources. In addition, this proposed rule does not interfere with the ability of Tribes to manage themselves or their funds or to regulate migratory bird activities on Tribal lands. Therefore, we preliminarily conclude that this proposed rule does not have ''Tribal implications'' under section 1(a) of E.O. 13175 with respect to waterfowl treaty rights. Thus, formal government-to-government consultation is not required by E.O. 13175 and related policies of the Department of the Interior. We will continue to collaborate with Tribes on concerns related to migratory bird hunting regulations.

Federalism Effects—Executive Order 13132

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the MBTA. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs.

Any State or Tribe may be more restrictive in its regulations than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. This proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, these proposed regulations do not have federalism implications and do not warrant the preparation of a federalism summary impact statement.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Authority

The rules that eventually will be promulgated for the 2025–26 hunting season are authorized under 16 U.S.C. 703–712, and 742 a–j.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2025–26 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. Issues requiring early discussion, action, or the attention of the States or Tribes are described below.

1. Ducks

As mentioned earlier in this document, the categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. Only those categories containing substantial recommendations (A, B, C, and D) are discussed below.

A. General Harvest Strategy

We will continue to use adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2025–26 season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts and provides a mechanism for reducing that uncertainty over time. We use an AHM protocol (decision framework) to evaluate four regulatory alternatives, each with a different expected harvest level, and choose the optimal regulation for duck hunting based on the status and demographics of mallards for the Mississippi, Central, and Pacific Flyways, and based on the status and demographics of a suite of four species (eastern waterfowl) in the Atlantic Flyway. We have specific AHM protocols that guide appropriate bag limits and season lengths for species of special concern, including black ducks, scaup, pintails, and mallards in the Atlantic Flyway (eastern mallards), within the general duck season. These protocols use the same outside season dates and lengths as those regulatory alternatives for the 2025–26 general duck seasons.

For the 2025–26 hunting season, we will continue to use independent optimizations to determine the appropriate regulatory alternative for mallard stocks in the Mississippi, Central, and Pacific Flyways and for eastern waterfowl in the Atlantic Flyway. This means that we will develop regulations for mid-continent mallards, western mallards, and eastern waterfowl independently based on the breeding stock that contributes primarily to each Flyway. We detailed implementation of AHM protocols for mid-continent and western mallards in the July 24, 2008, **Federal Register** (73 FR 43290), and for eastern waterfowl in the September 21, 2018, **Federal Register** (83 FR 47868).

B. Regulatory Alternatives

The basic structure of the current regulatory alternatives for AHM was adopted in 1997 (beginning with the 1997–98 general duck hunting season; 62 FR 31298, June 6, 1997). Beginning with the 2002–03 season, based upon recommendations from the Flyway Councils, we extended framework dates in the ''moderate'' and ''liberal'' regulatory alternatives by changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24, and by changing the closing date from the Sunday nearest January 20 to the last Sunday in January (67 FR 47224, July 17, 2002). These extended dates were made available with no associated penalty in season length or bag limits. Beginning with the 2019–20 season, we adopted a closing duck framework date of January 31 for the ''moderate'' and ''liberal'' alternatives in the Atlantic Flyway as part of the Atlantic Flyway's eastern waterfowl AHM protocol (83 FR 47868, September 21, 2018). We subsequently proposed to extend the framework closing date to January 31 across all four Flyways for the 2019–20 season (84 FR 16152, April 17, 2019).

The John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 (Pub. L. 116–9, Dingell Act) amended the MBTA to establish that the closing framework date for duck seasons will be January 31, unless a flyway chooses an earlier closing date. Thus, as directed by the Dingell Act, we adjusted the framework closing date under each regulatory alternative for all four Flyways to January 31 beginning with the 2019–20 season (84 FR 42996, August 19, 2019). Beginning with the 2021–22 season, we agreed to move the opening framework date to 1 week earlier in the restrictive regulatory alternative for the Mississippi and Central Flyways based on their recommendations (85 FR 51854, August 21, 2020).

For the 2025–26 general duck season, we propose to use the same regulatory alternatives that are in effect for the 2024–25 season (see table at the end of this proposed rule for specifics of the regulatory alternatives). Alternatives are specified for each Flyway and are designated as ''RES'' for the restrictive, ''MOD'' for the moderate, and ''LIB'' for the liberal alternative. We plan to finalize AHM regulatory alternatives for the 2025–26 season in a proposed rule, which we plan to publish by winter 2024 (see *Schedule of Biological Information Availability, Regulations Meetings, and* **Federal Register** *Publications for the 2025–26 Hunting Season* at the end of this proposed rule for further information).

C. Zones and Split Seasons

Zones and split seasons are special regulations designed to distribute hunting opportunities and harvests according to temporal, geographic, and demographic variability in waterfowl and other migratory game bird populations. The Service has allowed the use of zones to provide equitable distribution of duck hunting opportunities within a State or region. The intent is not to increase total annual waterfowl harvest in the zoned areas; harvest levels are to be adjusted downward if they exceeded traditional levels as a result of zoning. In 1991, the Service developed guidelines to provide a framework for controlling the proliferation of zones and split seasons in duck hunting. Substantial concern remains about the unknown consequences of zones and split seasons on duck populations and harvest redistribution among States and flyways, potential reduced effectiveness of regulations (season length and bag limit) to reduce duck harvest if needed, and the administrative burden. The guidelines identified a limited number of zone and split-season configurations that could be used for duck hunting and restricted the frequency of changes in State selection among these configurations to the beginning of 5-year intervals.

The next opportunity for States to select zones and split-season configurations for duck hunting is in 2025 for the fixed period of 2026–2030 seasons. We are proposing to adopt the same zones and split-season guidelines and configurations for duck hunting as we used for the 2021–25 seasons. We discussed and presented guidelines and configurations for duck zones and split seasons during 2021–25 seasons in our August 21, 2020, final rule (85 FR 51854 at 51857–51858). For those States wishing to change zone and split-season configurations in time for the 2026–2030 seasons, we would need to receive configuration selections and zone descriptions by August 31, 2025.

We also note that when we adopted guidelines for duck zones and split seasons during 2021–25 seasons, we offered a new configuration (two zones with up to three season segments in each) at the request of the four Flyway Councils. We expressed our sensitivity to the States' desires for flexibility in addressing human dimensions concerns of the hunting public (*i.e.,* foster hunter recruitment, retention, and satisfaction) despite our continued concerns about the proliferation of zones, impacts to harvest, regulation complexity, and administrative burden. Similarly, we revised the zones-splits guidelines for the 2011–2015 period to allow two new options (four zones with a continuous season, and three zones with up to two

season segments in each) at the request of the four Flyway Councils (77 FR 23094 at 23100–23101, April 17, 2012). Because the two zones and three season segments configuration are new, we stated in 2020 (85 FR 51854 at 51857–51858, August 21, 2020) that States that select this configuration must conduct an evaluation of impacts to hunter dynamics (*e.g.,* hunter numbers, satisfaction) and harvest during the fixed 5-year period it is implemented (*e.g.,* 2021–25 period). Five States selected the new configuration for the 2021–25 period in two Flyways: Atlantic (Connecticut, Maryland, North Carolina, and Virginia) and Mississippi (Louisiana). These States will need to provide an evaluation through the 2025 season regardless of actual implementation.

D. Special Seasons/Species Management

v. Pintails

Over the past 5 years, scientists from the U.S. Geological Survey (USGS) and the Service, in consultation with the Flyway Councils, have collaborated on the development of a revised decision framework for pintail harvest management. The Flyway Councils and Service undertook the revision process due to several concerns about the current strategy (adopted in 2010; see 75 FR 44856 at 44860; July 29, 2010). Concerns included public desires for inclusion of a more liberal regulatory alternative (3-pintail daily bag limit), reliance on outdated modeling techniques and data, and communication challenges associated with the regulatory schedule. To address these concerns, the Service convened the national Pintail Working Group (PWG) composed of two representatives from each Flyway, the four Service Flyway Representatives, and technical experts from the Service and USGS.

The PWG evaluated pintail population and harvest dynamics, built new models using updated data and modern estimation methods, and developed and evaluated many alternative harvest strategies. An important change is that the model of predicted harvest includes an estimate of fall population size. This has an important effect on the harvest strategy because the expected harvest decreases with decreasing fall pintail population size. The strategy recognizes that there is sustainable harvest under conditions that were not previously thought sustainable. (*i.e.,* expected increase in frequency of regulatory alternatives with liberal pintail daily bag limits including the possibility for 3 pintails).

In January 2024, after extensive consultation, the PWG proposed an interim harvest strategy to inform harvest management decisions for pintails and to learn about the effects of a 3-bird daily bag limit (new alternative) on management objectives. The interim strategy is intended to be implemented until three hunting seasons with a 3-bird daily bag limit have been realized (*i.e.,* trial phase over three or more hunting seasons) with an additional allowance for 2 years for data collection and analysis, review of performance, and evaluation of updated alternative strategies. Evaluation results will be provided to the Flyway technical committees for consideration in the development of a proposed operational harvest strategy, which may or may not include an option for a 3-bird daily bag limit.

We greatly appreciate the time and attention over the last 5 years that the PWG has devoted to review and consideration of the current pintail harvest strategy, technical updates, and the various alternatives for implementing a derived pintail harvest strategy. The revised interim strategy addresses stakeholder concerns with the current strategy and includes important technical updates with implications for our harvest management policy. In compliance with the Information Quality Act (section 515 of Pub. L. 106–554) and Service policy, a scientific peer review of the interim harvest strategy model was completed in early May 2023; during that review, no technical issues or concerns were identified, and reviewer comments have been addressed. Therefore, we propose to adopt the interim harvest strategy for pintail harvest management as described by the PWG in their report entitled, ''Proposed Interim Northern Pintail Harvest Strategy'' dated February 9, 2024, beginning with the 2025–26 hunting seasons. The proposed interim pintail harvest strategy is available at the address indicated under **FOR FURTHER INFORMATION CONTACT** and at *https://www.regulations.gov.*

xii. Other

Although not part of any current harvest management strategy, we propose to allow South Dakota and Nebraska an additional year to conduct a pilot study during the 2025–26 duck season of a two-tier regulatory system as described in our March 19, 2020, proposed rule (85 FR 15870 at 15875–15876). The 2024–25 hunting season is the last year of the planned 4-year pilot study. A final report on the 4-year pilot study will be due to the Service after the 2024–25 hunting season in about May 2025, which is after proposals for 2025–26 hunting season are formulated (about October 2024) by the Service and Flyway Councils. The 1-year extension will allow the Service and Flyway Councils to evaluate the results of the pilot study in meeting the primary goal of increasing or stabilizing the number of waterfowl hunters before the subsequent 2026–27 hunting regulations are developed. If the pilot study results indicate there is merit, the Service and Flyway Councils will consider developing a phase-two study that considers application of the pilot study concepts at the Flyway or national level, rather than at the State level, which is consistent with the Service's policy on the scale of migratory game bird management.

The intent of the two-tier regulation study is to evaluate whether regulations that relax the requirement for hunters to identify duck species can improve waterfowl hunter recruitment and retention.[1] Declines in waterfowl hunter numbers have been of concern to the Service and the Flyway Councils, prompting the development of recruitment, retention, and reactivation efforts in the conservation community. The study allows a person to obtain one of two license types during the duck season. The first license type (tier 1) allows a daily bag limit as specified in the current duck regulations (six ducks) with species- and sex-specific daily bag limit restrictions for species of special concern. The second license type (tier 2) allows a daily bag limit of 3 ducks with no species- or sex-specific restrictions in the daily bag limit. A memorandum of agreement between the Service and the two States specifies the purpose of the study and the roles and responsibilities of each party while conducting the pilot study.

16. Doves

Similar to duck hunting (see 1. Ducks, above), the Service has allowed the use

[1] The Service's primary goal is to ensure that waterfowl sport harvest management conforms to the MBTA and ensures the long-term conservation of bird populations. The various harvest strategies reflect this goal by ensuring that harvest does not exceed maximum sustainable yield (MSY). Secondarily to the MBTA, the Service has adopted policies to promote wildlife-based recreation, including migratory bird harvest. To the extent that management actions designed to promote hunter recruitment and retention do not result in harvest greater than the biological capacity of a population (*i.e.,* does not exceed MSY), the Service deems these actions to be in accordance with the MBTA. Management actions that result in harvest equal to or less than MSY will result in stable or increasing populations and provide consumptive and nonconsumptive uses indefinitely.

of zones to provide equitable distribution of dove hunting opportunities within a State or region. The intent is not to increase total annual dove harvest in the zoned areas; harvest levels are to be adjusted downward if they exceed traditional levels as a result of zoning. In 2006, the Service developed guidelines to provide a framework for controlling the proliferation of zones and split seasons in dove hunting (see 71 FR 51406 at 51408, August 29, 2006). Substantial concern remains about the unknown consequences of zones and split seasons on dove populations and harvest redistribution among States and flyways, potential reduced effectiveness of regulations (season length and bag limit) to reduce dove harvest if needed, and the administrative burden. The guidelines identified a limited number of zone and split-season configurations that could be used for dove hunting and restricted the frequency of changes in State selection among these configurations to the beginning of a 5-year interval.

The next opportunity for States to select zones and split-season configurations for dove hunting is in 2025 for the fixed period of 2026–2030 seasons. We are proposing to adopt the same zones and split-season guidelines and configurations for dove hunting as we used for the 2021–25 seasons. We discussed and presented guidelines and configurations for dove zones and split seasons during 2021–25 seasons in the August 21, 2020, final rule (85 FR 51854 at 51865–51866). For those States wishing to change zone and split-season configurations in time for the 2026–2030 seasons, we would need to receive configuration selections and zone descriptions by August 31, 2025.

BILLING CODE 4333–15–P

PROPOSED REGULATORY ALTERNATIVES FOR THE 2025–26 GENERAL DUCK SEASONS

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag	3	6	6	3	6	6	3	6	6	4	7	7
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	(d)	(d)	(d)	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2

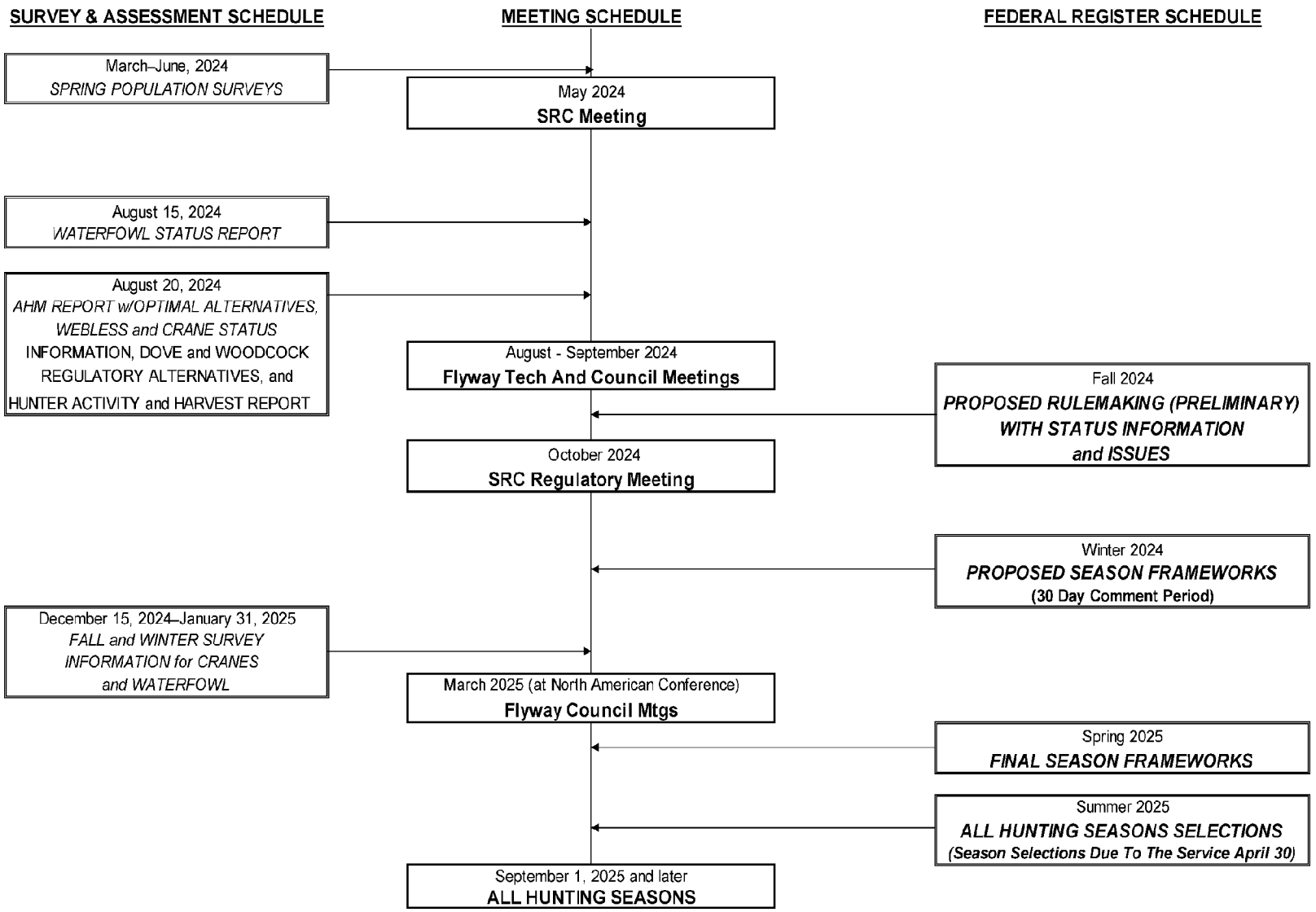
(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: Restrictive 12, days; Moderate and Liberal, 23 days. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit (depending on the area) would be 5–8 under the restrictive alternative, and 7–10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be September 1–January 26.

(d) Under the multi-stock AHM protocol for the Atlantic Flyway, the mallard bag limit is not prescribed by the regulatory alternative.

SCHEDULE[(a)] OF BIOLOGICAL INFORMATION AVAILABILITY, REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS FOR THE 2025–26 HUNTING SEASON



(a) All publication dates of Federal Register documents are target dates.

[FR Doc. 2025–01319 Filed 1–17–25; 8:45 am]
BILLING CODE 4333–15–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS–R7–MB–2024–0197; FXMB12610700000–201–FF07M01000]

RIN 1018–BG70

Migratory Bird Subsistence Harvest in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are proposing changes to the migratory bird subsistence harvest regulations in Alaska. Subsistence harvest regulations allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and establish when and where the harvesting of certain migratory birds may occur within each subsistence region. Subsistence harvest regulations, including these proposed changes, were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

DATES: We will accept comments received or postmarked on or before February 20, 2025.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments to Docket No. FWS–R7–MB–2024–0197.
- *U.S. Mail:* Public Comments Processing, Attn: FWS–R7–MB–2024–0197, U.S. Fish and Wildlife Service, MS: JAO/3W, 5275 Leesburg Place, Falls Church, VA 22041–3803.

We will post all comments on *https://www.regulations.gov*. This generally means that we will post any personal information you provide us (see Public Comment Procedures, below, for more information).

FOR FURTHER INFORMATION CONTACT: Wendy Loya, U.S. Fish and Wildlife Service, 1011 E Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 227–2942. 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. Please see Docket No. FWS–R7–MB–2024–0197 on *https://www.regulations.gov* for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

To ensure that any action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials concerning this proposed rule by one of the methods listed above in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via *https://www.regulations.gov,* your entire comment—including any personal identifying information, such as your address, telephone number, or email address—will be posted on the website. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. All comments and materials we receive will be available for public inspection via *https://www.regulations.gov*. Search for FWS–R7–MB–2024–0197, which is the docket number for this rulemaking.

Background

The Migratory Bird Treaty Act of 1918 (MBTA, 16 U.S.C. 703 *et seq.*) was enacted to protect migratory birds and gives the Secretary of the Interior the authority to regulate the harvest of certain migratory birds. The law further authorizes the Secretary to issue regulations to ensure that the indigenous inhabitants of the State of Alaska may take certain migratory birds and collect their eggs for nutritional and other essential needs during seasons established by the Secretary to provide for the preservation and maintenance of these migratory birds (16 U.S.C. 712(1)).

The take of migratory birds for subsistence uses in Alaska occurs primarily during the spring and summer, a timeframe not included in the fall and winter general migratory game bird hunting regulations for the United States. Regulations governing the subsistence harvest of migratory birds in Alaska are located in title 50 of the Code of Federal Regulations (CFR) in part 92. These regulations allow for the continuation of customary and traditional subsistence uses of migratory birds and establish when and where the harvesting of certain birds in Alaska may occur within each subsistence region.

The migratory bird subsistence harvest regulations are developed cooperatively. The Alaska Migratory Bird Co-Management Council (Council or AMBCC) consists of the Service, the Alaska Department of Fish and Game (ADFG), and Alaska Native representatives. The Council's primary purpose is to develop recommendations pertaining to the subsistence harvest of migratory birds.

The Council generally holds an annual spring meeting to review and recommend any regulatory changes for migratory bird subsistence harvest regulations in Alaska. The Council met May 22–23, 2024, and recommended changes to the subsistence harvest regulations intended to take effect beginning with the 2025 harvest season. The Council's recommendations were presented to the Pacific Flyway Council for their review and comment and subsequent submission to the Service Regulations Committee (SRC) for consideration at the SRC meeting on November 19, 2024.

Proposed Revisions to the Regulations

Under the collaborative process described above, this document proposes the following revisions to the regulations for the taking of certain migratory birds for subsistence uses in Alaska during the spring and summer.

Proposed Revision to Subpart A

In 50 CFR part 92, subpart A (general provisions), we propose to correct a reference to the United States Code (U.S. Code). The current definition for *Alaska Native* in § 92.4 incorrectly references 16 U.S.C. 1602(b), which refers to section 3(b) of the Alaska Native Claims Settlement Act. The Alaska Native Claims Settlement Act is found in title 43 not title 16 of the U.S.

Code. Therefore, the definition needs to be corrected to reference 43 U.S.C. 1602(b).

Proposed Revisions to Subpart C

In 50 CFR part 92, subpart C (general regulations governing subsistence harvest), we propose several changes to clarify the language regarding regional species closures, remove a species from the list of subsistence migratory bird species, and update the common and or scientific names of three species.

First, we propose revisions to clarify that the list of species open to subsistence harvest in § 92.22 may have additional region-specific harvest restrictions that do not appear in the list of subsistence migratory bird species. The language in the introductory paragraph in § 92.22 states that the only exceptions to the species open to harvest is a regional closure in Southeast Alaska for the harvest of all migratory bird species except glaucous-winged gulls for egg harvesting only. While this provision was accurate at the time the regulation was initially promulgated, current regulations include other regional species-specific harvest restrictions, some of which are included in the statewide list of subsistence migratory bird species at § 92.22. For example, for tundra swans, the regulation at § 92.22(a)(7) states that these birds and their eggs may be harvested except in Units 9(D) and 10. However, some regions in Alaska have species-specific harvest restrictions that are not listed in the statewide list of subsistence migratory bird species and are found only in § 92.31 (region-specific regulations). For example, in the Gulf of Alaska region's Prince William Sound Area East (§ 92.31(j)(2)(iii)), most non-waterfowl species are closed to harvest, but these restrictions can be found only in the region-specific regulations. Given this ambiguity, we propose to revise the language in the introductory paragraph of § 92.22 to clarify that regional species-specific harvest restrictions may exist in the region-specific regulations.

Second, we propose revisions to the list of subsistence migratory bird species in § 92.22 to reflect the Council's recommendation to close emperor goose harvest statewide. In 2016, the Council adopted an Emperor Goose Management Plan (Plan) to guide regulations for a spring-summer subsistence harvest of emperor geese and their eggs, which were opened to legal harvest in spring 2017. The Plan was developed in conjunction with the revised Pacific Flyway Council Management Plan for Emperor Geese (2016) that prescribes recommendations for the fall-winter hunting regulations. The two management plans complement each other and use the same population assessment methods, population objectives, and regulatory thresholds in their respective harvest strategies. The harvest strategy in the Plan uses the indicated total bird index (index) from the Yukon-Kuskokwim Delta Coastal Zone (Coastal Zone) survey that the Service conducts to assess population status relative to established thresholds. The harvest strategy specifies that the spring-summer subsistence emperor goose season will be open if the Coastal Zone index from the previous year is greater than 23,000 birds, and harvest will be closed if the index is below that threshold. If the Coastal Zone index is between 23,000 and 28,000 birds, the Council will consider implementing regulatory or nonregulatory conservation measures. The 2024 Coastal Zone index was 18,788 (95 percent confidence interval of 16,589–20,988) birds, which is below the harvest closure threshold of 23,000 birds. Thus, the Council recommended that the 2025 spring-summer subsistence season be closed to harvesting emperor geese. This recommendation was supported by the Pacific Flyway Council and the SRC in November 2024 and intended for implementation beginning with the 2025 subsistence harvest season. Therefore, we propose to remove emperor geese from the list of subsistence migratory bird species open to harvest in § 92.22.

Third, we propose an update to the list of subsistence migratory bird species in § 92.22 to incorporate changes in the list of birds protected by the MBTA at 50 CFR 10.13. On July 31, 2023, we published in the **Federal Register** (88 FR 49310) a revised list of migratory birds protected under the MBTA by adding or removing species or changing species names. Reasons for the changes to the list in § 10.13 included revised taxonomy and new evidence of natural occurrence or absence in the United States or U.S. territories. That rule went into effect on August 30, 2023. The revised list had updated nomenclature for three species on the list of subsistence migratory bird species at § 92.22.

Therefore, to be consistent with the list in § 10.13, we are proposing to change the common and scientific names of mew gull and change the scientific names for two species of cormorants, pelagic and double-crested, in § 92.22. The species formerly named mew gull has been split into two species, the common gull (*Larus canus*), which primarily occurs in Europe and Asia, and the short-billed gull (*Larus brachyrhynchus*), which occurs in North America. Therefore, we propose to replace mew gull (*Larus canus*) with short-billed gull (*Larus brachyrhynchus*). Pelagic and double-crested cormorants formerly shared the genus name Phalacrocorax, but now this genus has been split into multiple genera. We propose to update the scientific names of pelagic cormorant to *Urile pelagicus* and double-crested cormorant to *Nannopterum auritum*.

Proposed Revisions to Subpart D

In part 92, subpart D (annual regulations governing subsistence harvest), we propose to revise the regulations in § 92.31 to reflect the Council's recommendation to eliminate the permit requirement in the Kodiak Island Roaded Area (KIRA) and to change the species names for mew gulls. In 2021, spring-summer subsistence harvesting of migratory birds and eggs was opened experimentally for 3 years (2021–2023) in the Kodiak Archipelago region's KIRA by registration permit with a harvest reporting requirement. The Service requested that the Council evaluate harvest information from the experimental seasons before a season could be considered for operational status. In October 2023, the SRC recommended extending the experimental season by 1 year through 2024 to provide hunting opportunity while the Council completed their review. An announcement was published in the **Federal Register** on May 1, 2024 (89 FR 35010), to inform the public of the 1-year extension.

Following the 2023 subsistence season, the Council evaluated the harvest data from the experimental period. Based on permit report data, the Council determined that harvest was low during the experimental period; the average annual harvest of migratory birds and eggs in the KIRA during 2021–2023 was 122 birds and 100 eggs. For context, the data can be compared to the reported harvest from the last survey of the Kodiak Archipelago region in 2020. Residents in communities of the Kodiak Roaded Area subregion (communities that occur on the road system but hunted outside the KIRA) harvested 3,812 migratory birds and 2,612 eggs during that spring–summer season (Naves and Mengak 2023). Assuming KIRA permit registrants in 2021–2023 were residents of the KIRA, and their hunt effort was similar to 2020, average annual migratory birds and eggs harvested during the experimental period represented 3 percent of total birds (122 of 3,812) and 4 percent of total eggs (100 of 2,612) harvested in the

subregion. Based on this information, the Council concluded that an operational spring–summer hunt in the KIRA was unlikely to significantly increase harvest in the Kodiak Archipelago region.

Participation in the permit hunt was low and slightly increased over the experimental period, evidenced by issued permits: 46 in 2021, 58 in 2022, and 64 in 2023. The Council noted that the increase in participants over the experimental period was minimal, but future participation will be difficult to measure without a permit requirement. However, the Council also recognized that a change in participation may be indirectly monitored through public reports to Tribal organizations, the Kodiak City government, local law enforcement, ADFG, and the Service. If the increase is significant, the Council may consider future surveys to assess change in hunter participation, and if warranted, propose regulatory changes. Nonetheless, given the low harvest during the experimental season, the Council recommended eliminating the permit and harvest reporting requirement, acknowledging that such requirements are not part of customary and traditional hunting practices, may be a barrier to Indigenous participation, and are costly to administer.

The Council recommended retaining the species closures for Aleutian terns, Arctic terns, short-billed gulls, and emperor geese within the KIRA to protect species of conservation concern. Aleutian tern nesting colonies have declined by more than 80 percent in Alaska over the last 20 years, and only a few colonies remain on Kodiak Island. The largest colonies are within the KIRA, and implementing protective regulations for this species is a priority of the Council. Further, to offer additional protection for Aleutian terns, the season for Arctic terns and short-billed gulls, which nest in the same areas as Aleutian terns, will remain closed to harvest to reduce accidental harvest and colony disturbance of Aleutian terns. The KIRA will also remain closed to emperor geese (when emperor geese are open to harvest), a species of management concern, given that an open season may increase harvest for emperor geese along the road system.

On May 22, 2024, the Council recommended an amendment to the regulations for the Kodiak Archipelago region to remove the permit and reporting requirements, retain the four species closures, and make the season operational in the KIRA. This regulatory amendment was supported by the Pacific Flyway Council and the SRC in November 2024 and intended for implementation beginning with the 2025 subsistence season.

Compliance With the MBTA and the Endangered Species Act

The Service has dual objectives and responsibilities for authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these objectives continue to be challenging, they are not irreconcilable, provided that: (1) Regulations continue to protect threatened species, (2) measures to address documented threats are implemented, and (3) the subsistence community and other conservation partners commit to working together.

Mortality, sickness, and poisoning from lead exposure have been documented in many waterfowl species, including threatened spectacled eiders (*Somateria fischeri*) and the Alaska-breeding population of Steller's eiders (*Polysticta stelleri*). While lead shot has been banned nationally for waterfowl hunting since 1991, Service staff have documented the availability of lead shot in waterfowl rounds for sale in communities on the Yukon-Kuskokwim Delta and North Slope. The Service will work with partners to increase our education, outreach, and enforcement efforts to ensure that subsistence waterfowl hunting is conducted using nontoxic shot.

Conservation Under the MBTA

We have monitored subsistence harvest for several decades through the use of household surveys in the most heavily used subsistence harvest areas, such as the Yukon-Kuskokwim Delta. Based on our monitoring of the migratory bird species and populations taken for subsistence, we find that this proposed rule will provide for the preservation and maintenance of migratory birds as required by the MBTA. Communication and coordination with the AMBCC and the Pacific Flyway Council have aided in the establishment of hunting regulations to ensure the long-term viability of the migratory birds exposed to harvest.

Endangered Species Act Consideration

Spectacled eiders and the Alaska-breeding population of Steller's eiders are listed as threatened species under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Their migration and breeding distribution overlap with areas where the spring and summer subsistence migratory bird harvest is open in Alaska. Neither species is included in the list of subsistence migratory bird species at § 92.22; therefore, both species are closed to subsistence harvest. Under §§ 92.21 and 92.32, the Service may implement emergency closures, if necessary, to protect Steller's eiders or any other endangered or threatened species or migratory bird population.

Section 7 of the ESA requires the Secretary of the Interior to review other programs administered by the Department of the Interior and utilize such programs in furtherance of the purposes of the ESA. The Secretary is further required to ensure that any action authorized, funded, or carried out by the Department of the Interior is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat.

The Service's Alaska Region Migratory Bird Management Program will conduct an intra-agency consultation with the Service's Northern Alaska Fish and Wildlife Field Office on this proposed rule. A biological opinion will be updated based on new information to ensure this proposed rulemaking action is not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. Therefore, we expect that this proposed rule will comply with the ESA.

Comment Period

Implementation of the Service's 2013 supplemental environmental impact statement (SEIS) on the hunting of migratory birds resulted in changes to the overall timing of the annual regulatory schedule for the establishment of migratory bird hunting regulations and the Alaska migratory bird subsistence harvest regulations. The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Hunting of Migratory Birds (SEIS 20130139),'' filed with the Environmental Protection Agency on May 24, 2013, addressed compliance with the National Environmental Policy Act by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability of the SEIS in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376).

The 2013 SEIS resulted in the Service moving the annual summer-fall SRC meeting from July to October or November, and this procedural change

has greatly shortened the period to publish the proposed subsistence harvest regulations and solicit comments before subsistence harvest seasons start on April 2 each year. Thus, we have established a 30-day comment period for this proposed rule (see **DATES**, above), and we will be conducting Tribal consultations within Alaska simultaneously. We believe a 30-day comment period gives the public adequate time to provide meaningful comments.

Required Determinations

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

Executive Order (E.O.) 14094 amends and 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 and 13563. Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. Executive Order 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 proposed rule in a manner consistent with these requirements.

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

Regulatory Flexibility Act

The Department of the Interior certifies that, if adopted as proposed, this proposed rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required. The regulations at 50 CFR part 92 legalize a preexisting subsistence activity. The commodities that are regulated under these regulations are migratory birds, and the resources harvested are consumed. This proposed rule would make only modest changes to the current regulations.

Congressional Review Act

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

(a) Would not have an annual effect on the economy of $100 million or more. The regulations at 50 CFR part 92 legalize the subsistence harvest of migratory birds and, as such, do not involve commodities traded in the marketplace. This proposed rule would not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns.

(b) Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This proposed rule does not deal with traded commodities and, therefore, would not have an impact on prices for consumers.

(c) Would 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. This proposed rule deals with the harvesting of wildlife for personal consumption. It would not regulate the marketplace in any way to generate substantial effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this proposed rule would not impose a cost of $100 million or more in any given year on local, State, or Tribal governments or private entities. The proposed rule would not have a significant or unique effect on local, State, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. Participation on regional management bodies and the Council requires travel expenses for some Alaska Native organizations and local governments. In addition, they assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. When funding permits, the Service makes annual grant agreements available to the partner organizations and the ADFG to help offset their expenses. However, this proposed rule would not revise any regulations pertaining to participation in the regulatory process.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this proposed rule would not have significant takings implications. The regulations at 50 CFR part 92 are not specific to particular landownership but instead apply to the harvesting of migratory bird resources throughout Alaska. A takings implication assessment is not required.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant federalism implications to warrant the preparation of a federalism summary impact statement. The Service worked with the State of Alaska to develop these proposed regulations. Therefore, a federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this proposed rule, has determined that it would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relations With Native American Tribal Governments

Consistent with Executive Order 13175 (65 FR 67249; November 9, 2000), ''Consultation and Coordination with Indian Tribal Governments,'' and Department of the Interior policy on Consultation with Indian Tribes (December 1, 2011), we will send letters via electronic mail to all 229 Alaska federally recognized Indian Tribes. Consistent with Congressional direction (Pub. L. 108–199, div. H, sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Pub. L. 108–447, div. H, title V, sec. 518, Dec. 8, 2004, 118 Stat. 3267), we also will send letters to approximately 200 Alaska Native Corporations and other Tribal entities in Alaska soliciting their input as to whether or not they would like the Service to consult with them on the proposed changes to the migratory bird subsistence harvest regulations.

We implemented the amended treaty with Canada with a focus on local involvement. The treaty calls for the creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. They develop recommendations for, among other things: seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, educational programs, research and use of traditional knowledge, and habitat protection. The management bodies

involve village councils to the maximum extent possible in all aspects of management. To ensure maximum input at the village level, we required each of the 11 participating regions to create regional management bodies consisting of at least one representative from the participating villages. The regional management bodies meet twice annually to review and/or submit proposals to the statewide body.

Paperwork Reduction Act of 1995 (PRA)

This proposed rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has previously approved the information collection requirements associated with subsistence harvest reporting and assigned the following OMB control numbers:

- Alaska Migratory Bird Subsistence Harvest Household Survey, OMB Control Number 1018–0124 (expires July 31, 2027), and
- Regulations for the Taking of Migratory Birds for Subsistence Uses in Alaska, 50 CFR part 92, OMB Control Number 1018–0178 (expires July 31, 2027).

National Environmental Policy Act Consideration (42 U.S.C. 4321 et seq.)

The regulations at 50 CFR part 92 and options are considered in the environmental assessment, ''Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2025 Spring/Summer Harvest.'' Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This proposed rule is not a significant regulatory action under this Executive order; it allows only for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest. This proposed rule would not have any effect on energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211, and a statement of energy effects is not required.

References Cited

Naves, Liliana C. and Lara, F. Mengak. 2023. Bird and Egg Harvest on the Aleutian-Pribilof Islands and the Kodiak Archipelago, 2020. Alaska Department of Fish and Game Division of Subsistence, Technical Paper No. 493, Anchorage.

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, we propose to amend 50 CFR part 92 as set forth below:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

■ 2. Amend § 92.4 by revising the definition of ''Alaska Native'' to read as follows:

§ 92.4 Definitions.

* * * * *

Alaska Native means the same as ''Native,'' defined in section 3(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(b).

* * * * *

■ 3. Amend § 92.22 by:
■ a. Revising the introductory text;
■ b. Removing paragraph (a)(1);
■ c. Redesignating paragraphs (a)(2) through (33) as paragraphs (a)(1) through (32); and
■ d. Revising paragraphs (i)(6) and (l)(1) and (2).

The revisions read as follows:

§ 92.22 Subsistence migratory bird species.

You may harvest birds or gather eggs from the following species, listed in taxonomic order, within all included areas except where region-specific harvest restrictions apply as set forth in § 92.31. When birds are listed at the species level, all subspecies existing in Alaska are also open to harvest. All bird species not listed are closed to harvesting and egg gathering.

* * * * *

(i) * * *

(6) Short-billed Gull (*Larus brachyrhynchus*).

* * * * *

(l) * * *

(1) Double-crested Cormorant (*Nannopterum auritum*).

(2) Pelagic Cormorant (*Urile pelagicus*).

* * * * *

■ 4. Amend § 92.31 by revising the introductory text of paragraph (e) to read as follows:

§ 92.31 Region-specific regulations.

* * * * *

(e) *Kodiak Archipelago region.* No hunting or egg gathering for Arctic terns, Aleutian terns, short-billed gulls, and emperor geese is allowed in the Kodiak Island Roaded Area. The Kodiak Island Roaded Area consists of that portion of Kodiak Island (including exposed tidelands) south of a line from Termination Point along the north side of Cascade Lake to Anton Larsen Bay and east of a line from Crag Point to the west end of Saltery Cove. Marine waters adjacent to the Kodiak Island Roaded Area within 500 feet from the water's edge are included in the Kodiak Island Roaded Area. The Kodiak Island Roaded Area does not include islands offshore of Kodiak Island.

* * * * *

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2025–00512 Filed 1–17–25; 8:45 am]

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Notices

Federal Register
Vol. 90, No. 12
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by February 20, 2025 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: RUS Electric Loan Application and Related Reporting Burdens.

OMB Control Number: 0572–0032.

Summary of Collection: The Rural Utilities Service (RUS) was established in 1994 by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178, 7 U.S.C. 6941 *et seq.*) as successor to the Rural Electrification Administration (REA) with respect to certain programs, including the electric loan and loan guarantee program authorized under the Rural Electrification Act (RE Act) of 1936. The RE Act authorizes and empowers the Administrator of RUS to make and guarantee loans to furnish and improve electric service in rural areas. These loans are amortized over a period of up to 35 years and secured by the borrower's electric assets and/or revenue. RUS will collect information including studies and reports to support borrower loan applications.

Need and Use of the Information: RUS will collect information to determine the eligibility of applicants for loans and loan guarantees under the RE Act; monitor the compliance of borrowers with debt covenants and regulatory requirements in order to protect loan security; ensure that borrowers use loan funds for purposes consistent with the statutory goals of the RE Act; and obtain information on the progress of rural electrification and evaluate the success of RUS program activities. Without the information RUS would be unable to accomplish statutory goals.

Description of Respondents: Private Sector; Not-for-profit institutions.

Number of Respondents: 608.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 37,515.

Rural Utilities Service

Title: Telecommunications System Construction Policies and Procedures.

OMB Control Number: 0572–0059.

Summary of Collection: The Rural Electrification Act of 1936 (RE Act), 7 U.S.C. 901 *et seq.,* was amended in 2002 by title IV, Rural Broadband Access, by Farm Security and rural Investment Act, which authorizes Rural Utilities Service (RUS) to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition for facilities and equipment for the provision of broadband service in eligible rural communities in the States and territories of the United States. Title VI of the RE Act requires that loans are granted only to borrowers who demonstrated that they will be able to repay in full within the time agreed. RUS has established certain standards and specification for materials, equipment and construction to assure that standards are maintained; loans are not adversely affected, and loans are used for intended purposes.

Need and Use of the Information: RUS has developed specific forms for borrowers to use when entering into contracts for goods or services. The information collected is used to implement certain provisions of loan documents about the borrower's purchase of materials and equipment and the construction of its broadband system and is provided on an as needed basis or when the individual borrower undertakes certain projects. The standardization of the forms has resulted in substantial savings to borrowers by reducing preparation of the documentation and the costly review by the Government.

Description of Respondents: Private Sector; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 1,434.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 7,703.

Rural Utilities Service

Title: 7 CFR 1726, Electric System Construction Policies and Procedures—Electric.

OMB Control Number: 0572–0107.

Summary of Collection: The Rural Electrification Act of 1936, 7 U.S.C. 901 *et.seq.,* as amended, (RE ACT) in sec. 4 (7 U.S.C. 904) authorizes and empowers the Administrator of the Rural Utilities Service (RUS) to make loans in the several States and Territories of the United States for rural electrification and the furnishing and improving of electric energy to persons in rural areas. These loans are for a term of up to 35 years and are secured by a first mortgage on the borrower's electric system. In the interest of protecting loan security and accomplishing the statutory objective of a sound program of rural electrification, Section 4 of the RE Act further requires

that RUS make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the borrower, will be repaid in full within the time agreed. RUS will collect information using various RUS forms.

Need and Use of the Information: RUS will collect information to implement certain provisions of the RUS standard form of loan documents regarding the borrower's purchase of materials and equipment and the construction of its electric system by contract or force account. The use of standard forms and procurement procedures helps assure RUS that appropriate standards and specifications are maintained; agency loan security is not adversely affected; and loan and loan guarantee funds are used effectively and for the intended purposes. The information will be used by RUS electric borrowers, their contractors and by RUS. If standard forms were not used, borrowers would need to prepare their own documents at a significant expense; and each document submitted by a borrower would require extensive and costly review by both RUS and the Office of the General Counsel.

Description of Respondents: Private Sector; Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 477.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 82.

Rural Utilities Service

Title: Technical Assistance Program, 7 CFR part 1775.

OMB Control Number: 0572–0112.

Summary of Collection: The Rural Utilities Service is authorized by section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, American Indian Tribes, and nonprofit corporations to fund the development of drinking water, wastewater, and solid waste disposal facilities in rural areas with populations of up to 10,000 residents. Under the CONACT, 7 U.S.C. 1925(a), as amended, section 306(a) (14) (A) authorizes Technical Assistance and Training grants, and 7 U.S.C. 1932(b), section 310B authorizes Solid Waste Management grants. Grants are made for 100 percent of the cost of assistance. The Technical Assistance and Training Grants and Solid Waste Management Grants programs are administered through 7 CFR part 1775.

Need and Use of the Information: Nonprofit organizations applying for TAT and SWM grants must submit a pre-application, which includes an application form, narrative proposal, various other forms, certifications and supplemental information. RUS will collect information to determine applicant's eligibility, project feasibility, and the applicant's ability to meet the grant and regulatory requirements. RUS will review the information, evaluate it, and, if the applicant and project are eligible for further competition, invite the applicant to submit a formal application. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, or hindrances in making grants authorized by the TAT and SWM program.

Description of Respondents: Private Sector; Not-for-profit institutions.

Number of Respondents: 66.

Frequency of Responses: Reporting: Annually; On occasion.

Total Burden Hours: 5,558.

Rural Utilities Service

Title: 7 CFR part 1724 and Part 1738 Electric Engineering, Architectural Services and Design Policies and Procedures; and Rural Broadband Access Loans and Loan Guarantees.

OMB Control Number: 0572–0118.

Summary of Collection: The Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* as amended, authorizes Rural Utilities Service (RUS) to make loans in several States and Territories of the United States for broadband access and rural electrification and the furnishing and improving of electric energy to persons in rural areas. Title 7 CFR 1724 requires each borrower to select a qualified architect to perform certain architectural services and to use the designated form that provides for these services. The agency has developed standardized contractual forms used by borrowers to contract for services.

Need and Use of the Information: The information collected stipulates the parties to the agreement, contain certain information relating to the approved loan or loan guarantee, and provide detailed contractual obligations and services to be provided and performed relating to construction, project design, construction management, compensation, and related information. The contractual forms provide standardized contract agreements between the electric or broadband borrower and the engineering or architectural firm providing services to the borrower. This has resulted in substantial savings to borrowers by reducing preparation of the documentation and the costly review by the Government.

Description of Respondents: Private Sector; Business or other for-profit.

Number of Respondents: 4.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8.

Rural Utility Service

Title: 7 CFR 1780, Water and Waste Disposal Loan and Grant Program.

OMB Control Number: 0572–0121.

Summary of Collection: The Rural Utilities Service (''RUS''), an agency of the Rural Development (''RD''), United States Department of Agriculture, is requesting OMB clearance of the reporting requirements relating to 7 CFR part 1780, the regulation utilized to administer the Water and Waste Loans and Grants program. In addition, RUS is seeking clearance for applicants applying under 7 CFR part 1777, section 306C Water and Waste Disposal Loans and Grant,'' and 7 CFR part 1778, ''Emergency Community Water Assistance Grants'', which follow 7 CFR part 1780 for application requirements.

Section 306 of the Consolidated Farm and Rural Development Act (''CONACT''), 7 U.S.C. 1926, authorizes RUS to make loans and grants to public entities, federally-recognized American Indian Tribes, and not-for-profit corporations. The loans and grants fund the development of drinking water, wastewater, solid waste disposal, and storm wastewater disposal facilities in rural areas with populations of up to 10,000 residents. A rural area is defined in the CONACT as any city, town, or unincorporated area consisting of no more than 10,000 residents. In addition to the development costs, 7 CFR 1780.9, Eligible loan and grant purposes, defines the associated costs that are eligible for reimbursement, such as reasonable engineering and legal expenses. The agency uses information submitted by applicant entities to determine eligibility and evaluate project feasibility.

Need and Use of the Information: RD state and field offices collect the information from applicants, borrowers, and consultants. They use the information to determine applicant eligibility and project feasibility. They also use the information to ensure that borrowers operate on a sound basis and use the loan and grant funds for authorized purposes as defined in statute and regulation.

Description of Respondents: State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 656.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 109,200.

Rural Utility Service

Title: Servicing of Water Programs Loans and Grants.

OMB Control Number: 0572–0137.

Summary of Collection: This information collection package covers the Servicing of Water Programs Loans and Grants regulation, 7 CFR part 1782. The regulation outlines the Rural Utilities Service's (RUS), an agency delivering the United States Department of Agriculture's (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development (RD) and/or Agency, policies and procedures for servicing direct and insured Water and Waste Disposal loans and grants (WWLG); Watershed loans and advances (Watershed); Resource Conservation and Development loans (RCDL); Technical Assistance and Training grants (TAT); Emergency Community Water Assistance grants (ECWAG); Solid Waste Management grants (SWMG); and section 306C Water and Waste Facility loans and grants (Colonias/Tribal).

Need and Use of the Information: The Rural Utilities Service will collect information using various forms. The Agency provides forms and/or guidelines to assist in collection and submission of the information required to service loans and grants. In some cases, use of Agency forms is optional and the borrower may submit the information required on other forms. The Agency utilizes existing Rural Development forms to the greatest extent possible to continue to meet the needs of the program. The forms or related items completed by the borrower are submitted to and evaluated by the Agency servicing office. The information, mostly financial in nature, is required to determine if borrowers, based on their individual situations, qualify for the various servicing authorities.

Description of Respondents: State, Local, and Tribal Governments.

Number Of Respondents: 4,438.

Frequency Of Responses: Reporting: On occasion.

Total Burden Hours: 28,140.

Rural Utilities Service

Title: 7 CFR 1776, Household Water Well System Grant Program.

OMB Control Number: 0572–0139.

Summary of Collection: This program was formerly the Household Water Well System Grant Program, but its name was changed by the Agriculture and Nutrition Act of 2018. This regulation is used to administer grants made to private non-profit organizations under the DWS program. The Agency is authorized to make the grants under Section 306E of the Consolidated Farm and Rural Development Act (CONACT) 7 U.S.C. 1926e.

Need and Use of the Information: The grant applicants will provide information to be collected as part of the application and grant process through certain documentation, certifications, and completed forms. Grant applicants must show that the project will provide technical and financial assistance to eligible individuals to remedy household well problems. The grant recipients will establish a revolving loan fund lending program to provide water well loans to individuals who own or will own private wells in rural areas. The individual loan recipients may use the funds to construct, refurbish, and service their household well systems for an existing home.

Description of Respondents: Private Sector; Not-for-profit institutions.

Number of Respondents: 7.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 652.

Rural Utilities Service

Title: Special Authority to Enable Funding of Broadband and Smart Utility Facilities Across Select Rural Development Programs.

OMB Control Number: 0572–0156.

Summary of Collection: The Rural Utilities Service, Rural Business-Cooperative Service, and Rural Housing Service, agencies that comprise the Rural Development Mission Area within the United States Department of Agriculture, are issuing this final rule to establish the authority authorized by Section 6210 of the Agriculture Improvement Act of 2018. This rule describes the procedures by which these agencies will consider projects eligible for special broadband authority and Smart Utility facilities.

On December 20, 2018, Congress passed The Agricultural Improvement Act of 2018 (2018 Farm Bill) (Pub. L. 115–334). In addition to sweeping changes in broadband program authorities, Congress provided for special use of funding from other RD programs for broadband deployment in Section 6210, ''Smart Utility Authority for Broadband.'' The provision granted the Secretary of Agriculture the discretion to allow recipients of grants, loans, or loan guarantees under RD programs to use not more than 10 percent of such funding to finance broadband infrastructure in areas not served by the minimum acceptable level of broadband service, as defined in this Part, and which will not result in competitive harm to a current RD loan, grant, or loan guarantee. While section 6210 only imposes the competitive harm restriction with respect to RUS loan, grant, and loan guarantee recipients, RD has determined to apply the restriction RD-wide, consistent with the statutory guidance on conflicts and duplications of awards provided in 7 U.S.C. 2204b(d)(2).

Rural community leaders, businesses and utilities must consider broadband availability and uses as they plan for, and implement, new and improved facilities and services to support community and economic development. While integration of communications technology into a planned investment can be used for internal purposes, it can also serve as a catalyst to rural broadband deployment efforts. For example, investment in health care, public safety and businesses can be enhanced or leveraged to expand the availability and utilization of advanced broadband in rural areas. Smart highways can facilitate vehicle to infrastructure communications to enhance driver safety; smart water systems can remotely detect contaminants before they pose a health risk; smart pipelines can report leaks and structural weaknesses before they become dangerous; and smart grid systems deliver enhanced security and energy efficiency, as well as speed recovery after an electric outage. Through this regulation, RD enables limited integration of broadband deployment with other rural investments funded through its broad suite of programs. It does so without adding the burden of seeking funding through separate program areas.

Need and Use of the Information: The collection of information is necessary for RD to determine an applicant's ability to borrow under the terms of the 2018 Farm Bill and included programs and that the applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance. As part of that submission, applicants are required to provide a service area map, where applicable, of their entire service territory.

Description of Respondents: Private Sector; Businesses or other for-profits.

Number of Respondents: 53.

Frequency of Responses: Annually.

Total Burden Hours: 239.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2025–01286 Filed 1–17–25; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding this information collection received by February 20, 2025 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title: Web Forms for Research Data, Models, Materials, and Publications as Well as Study and Event Registration.

OMB Control Number: 0518–0032.

Summary of Collection: OMB Circular 130 Management of Federal Information Resources, establishes that ''agencies will use electronic media and formats . . . in order to make government information more easily accessible and useful to the public'' In order to provide information and services related to its program responsibilities defined at 7 CFR 2.65, the Agricultural Research Service (ARS) needs to obtain certain basic information from the public. Online forms allow the public to request from ARS research data, models, materials, and publications as well as registration for scientific studies and events.

Need and Use of the Information: ARS will use the information to respond to requests for specific services. The information will be collected electronically. If this collection is not conducted, ARS will be hindered from reducing the burden on its customers by providing them the most timely and efficient way to request services.

Description of Respondents: Individuals or households.

Number of Respondents: 14,400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 720.

Rachelle Ragland-Greene,

Departmental Information Collection Clearance Officer.

[FR Doc. 2025–01325 Filed 1–17–25; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by February 20, 2025 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 1901–E, Civil Rights Compliance Requirements.

OMB Control Number: 0575–0018.

Summary of Collection: Rural Development (RD) is required to provide Federal financial assistance through its housing and community and business programs on an equal opportunity basis. The information collection requirements in this request are needed to comply with civil rights laws and Executive Orders that provide protection and prohibit discrimination on the basis of 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, reprisal or retaliation for prior civil rights activity.

Need and Use of the Information: RD will use the information to monitor a recipient's compliance with the civil rights laws, and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis. This information is made available to USDA officials, officials of other Federal agencies and to Congress for reporting purposes. Without the required information, RD and its recipient will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner and in full compliance with the civil rights laws.

Description of Respondents: Individuals or households.

Number of Respondents: 27,000.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 458,363.

Rural Housing Service

Title: Fire and Rescue Loans—7 CFR 1942, Subpart C.

OMB Control Number: 0575–0120.

Summary of Collection: The Rural Housing Service (RHS) is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes for the development of essential community facilities primarily serving

rural residents. The primary regulation for administering this Community Facilities (CF) program is 7 CFR 1942–A (0575–0015). The procedures set out in 7 CFR 1942–A have been developed for determining eligibility, analyzing financial feasibility, taking security, monitoring the use of loan funds, monitoring the financial condition of borrowers, and otherwise assisting borrowers and applicants and protecting the Government's interest. This includes requirements for applicants to provide certain information and documents.

Need and Use of the Information: The information will be collected by Rural Development field offices from applicants/borrowers and consultants. This information will be used to determine applicant/borrower eligibility, project feasibility, and ensure borrowers operate on a sound basis and use loan funds for authorized purposes.

Description of Respondents: Private Sector; Not-for-profit institutions.

Number of Respondents: 1,000.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 7,881.

Rural Housing Service

Title: 7 CFR part 3565, ''Guaranteed Rural Rental Housing Program'' and Its' Supporting Handbook.

OMB Control Number: 0575–0174.

Summary of Collection: On March 28, 1996, the Housing Opportunity Program Extension Act of 1996 was signed. One of the provisions of the Act was the authorization of the section 538 Guaranteed Rural Rental Housing Program (GRRHP), adding the program to the Housing Act of 1949. The purpose of the GRRHP is to increase the supply of affordable rural rental housing through the use of loan guarantees that encourage partnerships between the Rural Housing Service (RHS), private lenders and public agencies. RUS will approve qualified lenders to participate and monitor lender performance to ensure program requirements are met. RHS will collect information from lenders on the eligibility cost, benefits, feasibility, and financial performance of the proposed project.

Need and Use of the Information: RHS will collect information from lenders to manage, plan, evaluate, and account for Government resources and from time to time, propose demonstration programs that use loan guarantees or interest credit. The GRRHP regulation and handbook will provide lenders and agency staff with guidance on the origination, and servicing of GRRHP loans and the approval of qualified lenders. RHS will use the information to evaluate a lender's request and make determination that the interests of the government are protected. Failure to collect information could have an adverse impact on the agency ability to monitor lenders and assess program effectiveness and effectively guarantee loans.

Description of Respondents: Private Sector; Business or other for-profit; Not for-profit Institutions.

Number of Respondents: 150.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 2,445.

Rural Housing Service

Title: Rural Community Development Initiative (RCDI).

OMB Control Number: 0575–0180.

Summary of Collection: Congress first authorized the Rural Community Development Initiative (RCDI) in 1999 with an appropriation of $6 million under the Rural Community Advancement Program (Pub. L. 106–78, which was amended by the Consolidated Appropriations Act, 2016 (Pub. L. 114–113)). The Community Facilities Division under the Rural Housing Service (RHS) administers this grant program. The intent of the RCDI grant program is to develop the capacity and ability of rural area recipients to undertake projects through a program of financial and technical assistance provided by qualified intermediary organizations. Intermediaries may be private or public (including tribal) organizations. Intermediaries are required to provide matching funds in an amount equal to the RCDI grant. Eligible recipients are nonprofit organizations, low-income rural communities, or federally recognized tribes.

Need and Use of the Information: The information will be collected from applicants/grantees (intermediary organizations applying for the grant), recipients (entities that receive assistance from the intermediary), and beneficiaries (entities or individuals that benefit from assistance provided by the recipient) by RHS staff in the National Office and Rural Development field offices. This information is used to determine applicant and recipient eligibility, project feasibility, and to ensure that grantees operate on a sound basis and use grant funds for authorized purposes. The Notice of Funding Availability (NOFA), published in the **Federal Register**, provides instructions for completing an application.

Description of Respondents: Private Sector; Not-for profit institutions.

Number of Respondents: 65.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 2,399.

Rural Housing Service

Title: RHS-Finance Office Forms.

OMB Control Number: 0575–0184.

Summary of Collection: Rural Development uses electronic methods for receiving and processing loan payments and collections. These electronic collection methods are approved by Treasury and include Customer Initiated Payments (CIP), FedWire, and Preauthorized Debits (PAD). The Agency that collects CIP information under this paperwork burden submission are Housing and Community Facilities and the Utilities Programs. The Agencies that collect FedWire and PAD information under this paperwork burden submission are the Housing and Community Facilities Programs, Business and Cooperative Programs, Water and Environmental Programs and Utilities Programs.

These electronic collection methods provide the borrower the ability to submit their loan payments the day prior to or the day of their installment due date. The benefits of these electronic payment methods include elimination of the mail time for submitting and receiving collections thereby giving borrowers use of their funds for a longer period; reduction in loan delinquencies; and improved efficiency for the Government and the borrower.

The following information is provided to comply with the Privacy Act of 1974 (Pub. L. 93–579). The information requested on the form is required under various provisions of title 15 U.S.C. 1601, 12 CFR 205, and 31 CFR 202, for the purpose of providing authority to the Department of Treasury to designate financial institutions to collect payments, by electronic means, from an account. The information will be used for identification with the records of the government agency and the financial institution to direct the payments to the point authorized. No deduction may be made unless a signed authorization form is received. Failure to furnish this information may delay or prevent the collection of these payments through the Automated Clearing House System.

To administer these electronic payment methods, Rural Development must collect the borrower's financial institution (FI) routing information (routing information includes the FI routing number and the borrower's account number). Rural Development uses Agency approved forms for collecting this FI routing information.

Need and Use of the Information: Rural Development requests that the borrower make payments electronically via CIP, FedWire, or PAD. In order to do this, Rural Development is seeking extension of Agency forms for collecting FI routing information for CIP, FedWire, and PAD collections. If the information were not collected, Rural Development would be unable to collect loan payments electronically.

Description of Respondents: Individuals and Households; Farms; Not-for-profit institutions; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 11,062.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,609.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2025–01357 Filed 1–17–25; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eleven Point Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Eleven Point 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. 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 make recommendations on recreation fee proposals for sites on the Mark Twain National Forest, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person and virtual meeting will be held on February 26, 2025, 1 p.m. to 3 p.m. central standard time.

Written and Oral Comments: Anyone wishing to provide in-person and/or virtual oral comments must pre-register by 4:30 p.m. central standard time on February 17, 2025. Written public comments will be accepted by 4:30 p.m. Central Standard Time on February 17, 2025. Comments submitted after this date will be provided by the Forest Service to the committee, but the committee may not have adequate time to consider those comments prior to the meeting.

All committee 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 at the Mark Twain National Forest Supervisor's Office, located at 401 Fairgrounds Road, Rolla, Missouri, 65401. The public may also join virtually via webcast, teleconference, videoconference and/or HSIN virtual meeting at *https://www.fs.usda.gov/main/mtnf/workingtogether/advisorycommittees.*

Written Comments: Written comments must be sent by email to *kimberly.houf@usda.gov or* via mail (postmarked) to Kimberly Houf, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, MO 65401. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make in-person oral comments must pre-register by 4:30 p.m. central standard time on February 17, 2025, and speakers can only register for one speaking slot. Requests to pre-register for oral comments must be sent by email to *kimberly.houf@usda.gov* or via mail (postmarked) to Kimberly Houf, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, MO 65401.

FOR FURTHER INFORMATION CONTACT: Michael Crump, Designated Federal Officer, by phone at (573) 341–7413 or email at *michael.crump@usda.gov;* or Kimberly Houf, RAC Coordinator at (573) 261–9714 or email at *kimberly.houf@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from title II project proponents and discuss title II project proposals;
2. Make funding recommendations on title II projects; and
3. Approve meeting minutes.

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 14 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 into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved communities. USDA is an equal opportunity provider, employer, and lender.

Dated: January 14, 2025.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2025–01285 Filed 1–17–25; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Secure Rural Schools Resource Advisory Committees

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Solicitation for members.

SUMMARY: The United States Department of Agriculture (USDA), Forest Service, is seeking nominations for the Secure Rural School Resource Advisory Committees (SRS RACs) pursuant to the Secure Rural Schools and Community Self-Determination Act (the Act) and the Federal Advisory Committee Act (FACA).

DATES: Written nominations must be received by April 17, 2025. A completed application packet includes the nominee's name, resume, and completed AD–755 Form (Advisory Committee or Research and Promotion Background Information). All completed application packets must be sent to one of the addresses below.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the name and addresses of the SRS RAC Regional Coordinators accepting nominations.

Additional information on the SRS RACs can be found by visiting the SRS RACs website at *https://www.fs.usda.gov/working-with-us/secure-rural-schools.*

FOR FURTHER INFORMATION CONTACT: Brianna Gallegos, National Partnership Coordinator, National Partnership Office, USDA Forest Service, Yates Building, 1400 Independence Avenue, Mailstop 1158, Washington, DC 20250; or by email to *SM.FS.SRSInbox@usda.gov* or phone 505–218–1535. Individuals who use telecommunications devices for the hearing impaired may call 711 to reach the Telecommunications Relay Service, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the provisions of FACA, the Secretary of Agriculture is seeking nominations for the purpose of improving collaborative relationships among people who use and care for national forests and provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II. The duties of SRS RACs include monitoring projects, advising the Secretary on the progress and results of monitoring efforts, and making recommendations to the Forest Service for any appropriate changes or adjustments to the projects being monitored by the SRS RACs.

SRS RACs Membership

The SRS RACs will be comprised of 15 members approved by the Secretary of Agriculture (or designee) where each will serve a 4-year term. SRS RACs memberships will be balanced in terms of the points of view represented and functions to be performed. The SRS RACs shall include representation from the following interest areas:

(1) Five persons who represent:

(a) Organized labor or non-timber forest product harvester groups;

(b) Developed outdoor recreation, off-highway vehicle users, or commercial recreation activities;

(c) Energy and mineral development, or commercial or recreational fishing groups;

(d) Commercial timber industry; and

(e) Federal grazing permit or other land use permit holders, or representative of non-industrial private forest land owners, within the area for which the committee is organized.

(2) Five persons who represent:

(a) Nationally or regionally recognized environmental organizations;

(b) Regionally or locally recognized environmental organizations;

(c) Dispersed recreational activities;

(d) Archaeology and history; and

(e) Nationally or regionally recognized wild horse and burro interest, wildlife hunting organizations, or watershed associations.

(3) Five persons who represent:

(a) State elected office holder;

(b) County or local elected office holder;

(c) American Indian Tribes within or adjacent to the area for which the committee is organized;

(d) Area school officials or teachers; and

(e) Affected public-at-large.

If a vacancy arises, the Designated Federal Officer (DFO) may consider recommending to the Secretary (or designee) to fill the vacancy as soon as it occurs with a candidate from the applicant pool provided an appropriate candidate is available. In accordance with the Act, members of the SRS RAC shall serve without compensation. SRS RAC members and replacements may be allowed travel expenses and per diem for attendance at committee meetings, subject to approval of the DFO responsible for administrative support to the SRS RAC.

Nomination and Application Information

The appointment of members to the SRS RACs will be made by the Secretary of Agriculture (or designee). The public is invited to submit nominations for membership on the SRS RACs, either as a self-nomination or a nomination of any qualified and interested person. Any individual or organization may nominate one or more qualified persons to represent the interest areas listed above.

To be considered for membership, nominees must:

1. Be a resident of the State in which the SRS RAC has jurisdiction,

2. Identify what interest group they would represent and how they are qualified to represent that interest group,

3. Provide a cover letter stating why they want to serve on the SRS RAC and what they can contribute,

4. Provide a resume showing their past experience in working successfully as part of a group working on forest management activities,

5. Complete Form AD–755, Advisory Committee or Research and Promotion Background Information. The Form AD–755 may be obtained from the Regional Coordinators listed below or from the following SRS RACs website: *https://www.fs.usda.gov/working-with-us/secure-rural-schools/title-2.* All nominations will be vetted by the Forest Service.

Nominations and completed applications for SRS RACs should be sent to the appropriate Forest Service Regional Offices listed below:

Northern Regional Office—Region 1

Helena-Lewis Clark RAC, Flathead RAC, Gallatin RAC, Idaho Panhandle RAC, Lincoln RAC, Mineral County RAC, Missoula RAC, North Central Idaho RAC, Ravalli RAC, Sanders RAC, Southern Montana RAC, Southwest Montana RAC, Tri-County RAC.

Jeffery Miller, Northern Regional Coordinator, Forest Service, 26 Fort Missoula Road, Missoula, Montana 59804, (406)-329–3576 or email *jeffrey.m.miller@usda.gov.*

Rocky Mountain Regional Office—Region 2

Black Hills RAC and Greater Rocky Mountain RAC.

Jace Ratzlaff, Rocky Mountain Regional Coordinator, Forest Service, 1617 Cole Blvd. Building 17, Lakewood, Colorado 80401, (719) 469–1254 or email *jace.ratzlaff@usda.gov.*

Southwestern Regional Office—Region 3

Coconino County RAC, Eastern Arizona RAC, Northern New Mexico RAC, Southern Arizona RAC, Southern New Mexico RAC, Yavapai RAC.

Erik Stemmerman, Southwestern Regional Coordinator, Forest Service, 333 Broadway SE, Albuquerque, New Mexico 87102, (575) 539–2481 or email *erick.stemmerman@usda.gov.*

Intermountain Regional Office—Region 4

Southern Utah RAC, Alpine RAC, Bridger-Teton RAC, Central Idaho RAC, Eastern Idaho RAC, Nevada RAC, Northern Utah, South Central Idaho RAC, Southwest Idaho RAC.

Sabrina Kohrt, Intermountain Regional Coordinator (Idaho, Utah, Nevada), Forest Service, 324 25th Street, Ogden UT 84401, (720) 601–0756 or email *sabrina.kohrt@usda.gov.*

Pacific Southwest Regional Office—Region 5

Butte County RAC, Del Norte County RAC, El Dorado County RAC, Fresno County RAC, Glenn and Colusa Counties RAC, Humboldt County RAC, Kern and Tulare Counties RAC, Lassen County RAC, Mendo-Lake County RAC, Modoc County RAC, Nevada and Placer Counties RAC, Plumas County RAC, Shasta County RAC, Sierra County RAC, Siskiyou County RAC, Tehama RAC, Trinity County RAC, Tuolumne and Mariposa Counties RAC.

Paul Wade, Pacific Southwest Regional Coordinator, Forest Service, 1323 Club Drive, Vallejo, California 94592, (707) 562–9010 or email *paul.r.wade@usda.gov.*

Pacific Northwest Regional Office—Region 6

Colville RAC, Deschutes and Ochoco RAC, Fremont and Winema RAC, Hood and Willamette RAC, Gifford Pinchot RAC, Northeast Oregon Forests RAC, Olympic Peninsula RAC, Rogue and Umpqua RAC, Siskiyou (OR) RAC, Siuslaw RAC, Mt. Baker Snoqualmie National Forest RAC, Wenatchee-Okanogan RAC, Umatilla Washington RAC.

Rebecca Ciciretti, Pacific Northwest Regional Office, Forest Service, 1220 SW 3rd Avenue, Portland, OR 97204, (202)–290–4748 or email *rebecca.ciciretti@usda.gov.*

Southern Regional Office—Region 8

Alabama RAC, Cherokee RAC, Daniel Boone RAC, Davy Crockett RAC, Florida National Forests RAC, Francis Marion-Sumter RAC, Kisatchie RAC, Ozark-Ouachita RAC, Sabine-Angelina RAC, National Forest in Mississippi RAC, Virginia RAC, El Yunque RAC.

Danielle Knight, Southern Regional Coordinator, Forest Service, 1720 Peachtree Road, Northwest, Atlanta, Georgia 30309, (470)–725–9779 or email *danielle.knight@usda.gov.*

Eastern Regional Office—Region 9

Allegheny RAC, Chippewa National Forest RAC, Eleven Point RAC, Hiawatha RAC, Huron-Manistee RAC, North Wisconsin RAC, Ottawa, Superior RAC, West Virginia RAC.

Tiffany Benna, Eastern Regional Coordinator, Forest Service, 71 White Mountain Drive, Campton, New Hampshire 03223, (603)–348–0078 or email *tiffany.benna@usda.gov.*

Alaska Regional Office—Region 10

Kenai Peninsula-Anchorage Borough RAC, North Tongass RAC, Prince William Sound RAC, South Tongass RAC.

Carlos D La Torree, Alaska Regional Coordinator, Forest Service, 161 E 1st Ave Door 8, Anchorage, Alaska 99501, (907) 738–2758 or email *carlos.delatorre@usda.gov.*

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 practicable, individuals with demonstrated ability to represent the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved communities. USDA is an equal opportunity provider, employer, and lender.

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.

Dated: January 14, 2025.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2025–01287 Filed 1–17–25; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty order on pure magnesium from the People's Republic of China (China). The period of review is May 1, 2022, through April 30, 2023.

DATES: Applicable January 21, 2025.

FOR FURTHER INFORMATION CONTACT: John Conniff, 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) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 2024, Commerce published the *Final Results* of the 2022–2023 administrative review of pure magnesium from China.[1] On December 13, 2024, Commerce received a timely filed allegation of ministerial errors from Tianjin Magnesium Metal Co., Ltd. (MMC) concerning the *Final Results.*[2] On December 16, 2024, we received comments concerning a ministerial error in the final margin calculation from US Magnesium LLC, (the petitioner).[3] The review covers MMC and its affiliate, Tianjin Magnesium International Co., Ltd. (TMI).[4]

Legal Framework

Section 751(h) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.224(f) define a ''ministerial error'' as including ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the

[1] *See Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2022–2023,* 89 FR 100967 (December 13, 2024) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *See* MMC's Letter, ''Ministerial Error Allegations,'' dated December 13, 2024 (MMC Ministerial Allegation).

[3] *See* Petitioner's Letter, ''Petitioner's Submission of Ministerial Error Comments,'' dated December 16, 2024 (Petitioner Ministerial Allegation).

[4] In the 2011–2012 administrative review, Commerce collapsed both TMI and MMC into a single entity. *See Final Results* IDM at 2.

like, and any other unintentional error which the administering authority considers ministerial.'' With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review . . .''

Ministerial Errors

Commerce reviewed the record, and we agree that the errors alleged by MMC and the petitioner constitute ministerial errors within the meaning of section 751(h) of the Act and 19 CFR 351.224(f). Specifically, with regard to MMC's allegations, we find that we made inadvertent errors relating to the calculation of transportation costs for packing materials and for the calculation of revised brokerage and handling expenses.[5] We also agree with the petitioner that Commerce should have multiplied the labor fields by their relevant surrogate values.[6] Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Results* to reflect the correction of the ministerial errors, as described in the Ministerial Error Memorandum.[7] Based on the corrections, MMC's final dumping margin has changed from 32.60 percent to 25.26 percent. The amended estimated weighted-average dumping margins are listed in the ''Amended Final Results of Review'' section below. For a complete discussion of the ministerial error allegations, as well as Commerce's analysis, *see* the accompanying Ministerial Error Memorandum. The Ministerial Error Memorandum is on file electronically via ACCESS. ACCESS is available to registered users at *https://access.trade.gov.*

Amended Final Results of Review

As a result of correcting the ministerial errors, Commerce determines that the following weighted-average dumping margin exists for the period May 1, 2022, through April 30, 2023:

Exporter	Weighted-average dumping margin (percent)
Tianjin Magnesium International Co., Ltd./Tianjin Magnesium Metal Co., Ltd.	25.26

[5] *See* MMC Ministerial Allegation at 1–2.

[6] *See* Petitioner Ministerial Allegation at 1–2.

[7] *See* Memorandum, ''Analysis of Ministerial Error Allegations,'' dated concurrently with this notice (Ministerial Error Memorandum).

Disclosure

Commerce intends to disclose the calculations performed in connection with these amended final results of review to interested parties within five days after public announcement of the amended final results or, if there is no public announcement, within five days of the date of publication of the notice of amended final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these amended final results of the administrative review.

For MMC/TMI, which have a final amended weighted-average dumping margin that is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer-specific assessment rates, in accordance with 19 CFR 351.212(b)(1). Pursuant to 19 CFR 351.212(b)(1), where the respondent reported the entered value of its U.S. sales, we will calculate importer-specific *ad valorem* assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondent did not report entered value, we will calculate importer-specific per-unit duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of those sales. To determine whether an importer-specific per-unit assessment rate is *de minimis* in accordance with 19 CFR 351.106(c)(2), we will also calculate an importer-specific *ad valorem* ratio based on estimated entered values.

Pursuant to a refinement in our non-market economy practice, for sales that were not reported in the U.S. sales data submitted by MMC/TMI, we will instruction CBP to liquidate entries associated with those sales at the rate for the China-wide entity (*i.e.,* 111.73 percent).[8]

The amended final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the amended final results of this review and for future deposits of estimated duties, where applicable.[9]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the amended 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

Upon publication of this notice in the **Federal Register** the following cash deposit requirements will be effective for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after December 13, 2024, the publication date of the *Final Results,* as provided by section 751(a)(2)(C) of the Act: (1) the amended cash deposit rate for MMC/TMI will be equal to the weighted-average dumping margin that is established in the amended final results of this review; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise that have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the period of review. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

[8] *See Pure Magnesium from the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review of the Antidumping Duty Order,* 75 FR 80791 (December 23, 2010).

[9] *See* section 751(a)(2)(C) of the Act.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of 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

We are issuing and publishing this notice in accordance with sections 751(h) and 777(i)(1) of the Act, and 19 CFR 351.224(e).

Dated: January 13, 2025.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2025–01304 Filed 1–17–25; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE382]

Nominations for the Western and Central Pacific Fisheries Commission Permanent Advisory Committee

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

ACTION: Notice of request for nominations.

SUMMARY: NMFS is soliciting nominations (which may include self-nominations) to the Advisory Committee to the U.S. Section to the Permanent Advisory Committee (PAC) as established under the Western and Central Pacific Fisheries Convention (WCPFC) Implementation Act (Act). The PAC, composed of individuals from groups concerned with the fisheries covered by the Western and Central Pacific Fisheries Convention (Convention), provides recommendations to the U.S. Commissioners to the Western and Central Pacific Fisheries Commission (Commission) regarding the deliberations and decisions of the Commission.

DATES: Nominations must be received by March 24, 2025.

ADDRESSES: Nominations, including a letter of interest and a resume or curriculum vitae, should be sent via email to Katrina Poremba at *katrina.poremba@noaa.gov.* Include in the subject line the nomination for a position as an Advisory Committee member.

The following information should be included in the nomination documents: (1) full name, address, telephone, and email address of nominee; (2) nominee's organization(s) or professional affiliation(s) serving as the basis for the nomination, if any; and (3) a background statement, not to exceed one page in length, describing the nominee's qualifications, experience and interests, specifically as related to the fisheries covered by the Convention.

FOR FURTHER INFORMATION CONTACT: Katrina Poremba, NMFS Pacific Islands Regional Office; 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818; email: *katrina.poremba@noaa.gov;* phone: (808) 725–5096.

SUPPLEMENTARY INFORMATION:

The Convention and the Commission

The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and the Agreement for the Implementation of the Provisions of the UNCLOS Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. The Convention establishes the Commission, the secretariat of which is based in Pohnpei, Federated States of Micronesia.

The Convention applies to all highly migratory fish stocks (defined as all fish stocks of the species listed in Annex I of the UNCLOS occurring in the Convention Area, and such other species of fish as the Commission may determine), except sauries.

The United States actively supported the negotiations and the development of the Convention and signed the Convention when it was opened for signature in 2000. It participated as a cooperating non-member of the Commission since it became operational in 2005. The United States became a Contracting Party to the Convention and a full member of the Commission when it ratified the Convention in January 2007. Under the Act, the United States is to be represented on the Commission by five U.S. Commissioners, appointed by the President.

Permanent Advisory Committee

The Act provides in section 6902(d) that the Secretary of Commerce, in consultation with the U.S. Commissioners to the Commission, will appoint individuals as members of the advisory committee established under the Act, referred to here as the PAC.

The appointed members of the Permanent Advisory Committee are to include not less than 15 nor more than 20 individuals selected from the various groups concerned with the fisheries covered by the Convention, providing, to the extent practicable, an equitable balance among such groups. On behalf of the Secretary of Commerce, NMFS is now seeking nominations for these appointments.

In addition to the 15–20 appointed members, the Permanent Advisory Committee includes the chair of the Western Pacific Fishery Management Council's Advisory Committee (or designee), and officials of the fisheries management authorities of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (or their designees).

Members of the Permanent Advisory Committee will be invited to attend all non-executive meetings of the U.S. Commissioners to the Commission and at such meetings will be given the opportunity to examine and be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission. Members of the Permanent Advisory Committee are also invited to participate in meetings of the Western and Central Pacific Fisheries Commission, as members of the United States' delegation.

Each appointed member of the Permanent Advisory Committee will serve for a term of 2 years and is eligible for reappointment. This request for nominations is for the term to begin on August 3, 2025, and is for a term of 2 consecutive years.

All members of the Advisory Committee are appointed in their individual professional capacity and undergo a background screening. Any individual appointed to the Committee who is unable to attend all or part of an Advisory Committee meeting may not appoint another person to attend such meetings as their proxy. Nominees should be able to fulfill the time and travel commitments required to participate in the Committee's meeting(s). The meetings are normally 2 to 3 days long and can be held virtually or in Honolulu, Hawaii.

The Secretaries of Commerce and State will furnish the Permanent Advisory Committee with relevant information concerning fisheries and international fishery agreements.

NMFS, on behalf of the Secretary of Commerce, will provide to the Permanent Advisory Committee administrative and technical support services as are necessary for its effective functioning.

Appointed members of the Permanent Advisory Committee will serve without pay, but while away from their homes or regular places of business in the performance of services for the advisory committee will be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under 5 U.S.C. 5703. They will not be considered Federal employees while performing service as members of the advisory committee except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28.

Procedure for Submitting Nominations

Nominations for the Permanent Advisory Committee should be submitted to NMFS (see **ADDRESSES**). This request for nominations is for first-time nominees as well as previous and current Permanent Advisory Committee members. Self-nominations are acceptable. Nominations should include a letter of interest and a resume or curriculum vitae that covers the following information: (1) full name, address, telephone, and email address of nominee; (2) nominee's organization(s) or professional affiliation(s) serving as the basis for the nomination, if any; and (3) a background statement, not to exceed one page in length, describing the nominee's qualifications, experience and interests, specifically as related to the fisheries covered by the Convention.

NMFS encourages nominations of diverse people including women and individuals from underserved communities that meet the knowledge, experience, and other requirements of the positions described in this notice. See Executive Order (E.O.) 13985 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government) section 2 (defining ''underserved communities'' as ''populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life,'' ''such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.''). E.O. 13985 is available at *https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government.*

Authority: 16 U.S.C. 6902.

Dated: January 15, 2025.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2025–01381 Filed 1–17–25; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Office of Marine and Aviation Operations: Occupational Health, Safety, and Readiness Forms

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 12, 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Office of Marine and Aviation Operations: Occupational Health, Safety, and Readiness Forms.

OMB Control Number: 0648–0824.

Form Number(s): Medical: 57–10–01, 57–10–02, 57–10–05. Safety: 57–17–02, 57–17–09. Small Boat: 57–19–04.

Type of Request: Regular submission [revision to an approved information collection].

Number of Respondents: 1,515.

Average Hours Per Response: Response time varies based on the form. Form may take as little as 5 minutes to complete or as long as 30 minutes.

Total Annual Burden Hours: 537.

Needs and Uses: This is a request for approval of a revision and extension to a collection currently in use with OMB approval. The NOAA Health Services Questionnaire NF 57–10–01 is being revised to include supportive questions to document previous sailing dates and clarifying medical information within NF 57–10–01 to ensure OMAO has a complete medical history for all personnel aboard NOAA vessels. These changes are not expected to change the burden response time.

The National Oceanic and Atmospheric Administration's (NOAA) Office of Marine and Aviation Operations (OMAO) manages and operates NOAA's fleet of 15 research and survey ships and nine specialized environmental data-collecting aircraft. Comprised of civilians and officers of the NOAA Commissioned Officer Corps, OMAO also manages the NOAA Diving Program, NOAA Small Boat Program, and NOAA Uncrewed Systems Operations Center.

The research and survey ships operated, managed, and maintained by OMAO comprise the largest fleet of federal research ships in the nation. Ranging from large oceanographic research vessels capable of exploring the world's deepest ocean, to smaller ships responsible for charting the shallow bays and inlets of the United States, the fleet supports a wide range of marine activities including fisheries surveys, nautical charting, and ocean and climate studies.

NOAA aircraft operate throughout the world providing a wide range of capabilities including hurricane reconnaissance and research, marine mammal and fisheries assessment, and coastal mapping. NOAA aircraft carry scientists and specialized instrument packages to conduct research for NOAA's missions.

Housed within the NOAA Office of Marine and Aviation Operations and staffed by the U.S. Public Health Service (USPHS) Commissioned Corps officers, the Office of Health Services (OHS) is charged with directly supporting all personnel within the National Oceanic and Atmospheric Administration (NOAA).

NOAA medical officers work to maximize deployment readiness and minimize medically related disruptions to fleet, aircraft, and diving operations. OHS programs assess and promote mental and physical readiness within their operational medical discipline.

Given the austere and geographically remote operational environments OHS supports, our officers are also responsible for preventing and containing disease in operational environments as subject matter experts in travel medicine. The forms contained in this collection will be used to make medical readiness recommendations for individuals and to key leadership in operational environments.

Affected Public: Individuals.

Frequency: As needed.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: NAO 205–1, NOAA Records Management Program and 33 U.S.C. 941.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the collection.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2025–01314 Filed 1–17–25; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE614]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Coast Guard Construction in Florence, Oregon

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the United States Coast Guard (USCG) for authorization to take marine mammals incidental to the Station Siuslaw River construction project in Florence, Oregon. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than February 20, 2025.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.harlacher@noaa.gov.* Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms used above are included in the relevant sections below and can be found in section 3 of the MMPA (16 U.S.C. 1362) and NMFS regulations at 50 CFR 216.103.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

Summary of Request

On October 26, 2023, NMFS received a request from the USCG for an IHA to take marine mammals incidental to pile

driving activity associated with the Station Siuslaw River construction project in Florence, Oregon. Following NMFS' review of the application, we received a revised version of the application on April 18, 2024. After finalizing construction details, the USCG submitted revised versions on July 16, 2024 and October 16, 2024, followed by a final revised version on November 18, 2024, which was deemed adequate and complete on December 5, 2024. USCG's request is for take of harbor seal, California sea lion, Steller sea lion, and harbor porpoise by Level B harassment, and for harbor seal and harbor porpoise, Level A harassment. Neither USCG nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The USCG requested an IHA to correct shoreline erosion and replace the covered mooring and appurtenant structures at USCG Station Siuslaw River in Florence, Oregon (Figure 1). This two-phased project entails both onshore and in-water construction activities including site preparation, demolition, shoreline stabilization measures, pile removal and installation, and overwater construction. Phase 1 includes onshore infrastructure improvements, sitework and shoreline stabilization, and phase 2 includes overwater and in-water construction including all pile install and removal.

The only part of the project that may result in Level A and Level B harassment, and further analyzed in this notice, are the in-water construction activities associated with vibratory and impact pile driving (Phase 2). The USCG proposes removal of 71 timber piles via vibratory driving and installation of 79 total piles via vibratory and impact driving with an estimated 48 total days of pile removal and install. USCG plans to install 16-inch (in) to 20-in steel pipe piles, and/or 14-in H-piles for their new infrastructure. Pile driving would only occur within the Oregon Department of Fish and Wildlife (ODFW) approved in-water work window; however the proposed IHA would have a 1-year period of effectiveness.

Dates and Duration

The IHA would be valid from November 1, 2025 to October 31, 2026; however, pile driving would only occur on approximately 48 days during the ODFW in-water work window from November 1, 2025 to February 29, 2026.

Specific Geographic Region

The project location is on the east river bank of the Siuslaw River, approximately 5 kilometers (km) northwest of the downtown waterfront of the City of Florence, Oregon (Figure 1). Vegetated dunes in the Oregon Dunes National Recreation Area, protected by a series of four rock groin structures, are located on the opposite bank of the Station Siuslaw River.

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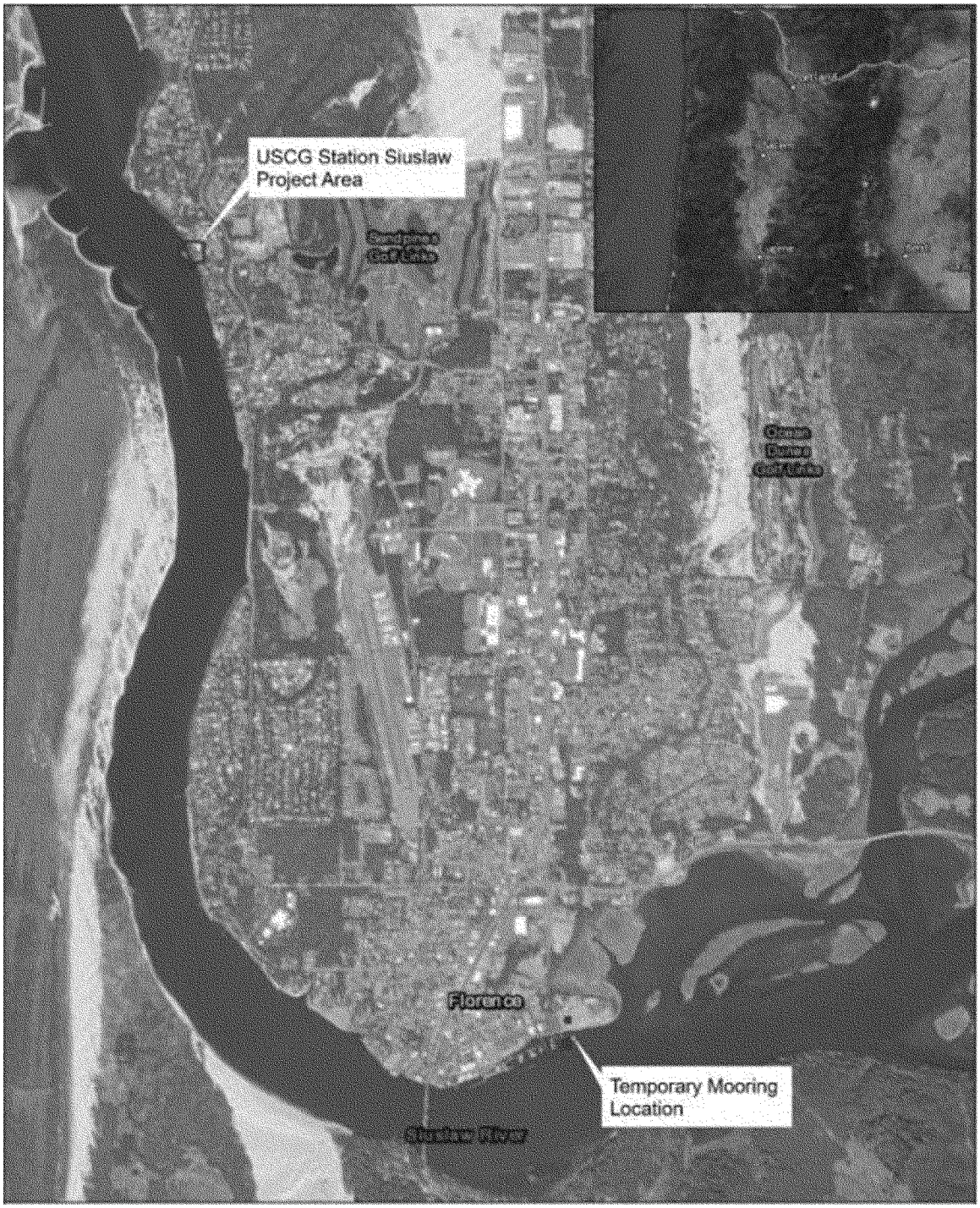


Figure 1—Project Location and Vicinity

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Detailed Description of the Specified Activity

Equipment and most materials needed to perform onshore infrastructure improvements, sitework, and shoreline stabilization would be from a barge or similar floating work platform which would also serve as the primary staging area. The overall project includes landslide improvements, waterside improvements, in-water construction, over-water construction, and upland construction. Phase 1, which would occur on approximately 48 days, includes only onshore infrastructure improvements, sitework, and shoreline stabilization. All of these activities would occur on land, and there are no haul-outs in the project's immediate vicinity; therefore we don't expect take incidental to these activities, and they are not discussed further. This IHA only covers in-water construction associated with pile installation and removal activities that could result in take of marine mammals.

Piles would be removed and installed during the in-water work window from

November 1, 2025 through February 28, 2026, using vibratory and impact hammers. USCG estimates up to three piles would be driven each 8 hour workday, and the actual driving time for each pile install could be as high as approximately 60 minutes or 15 minutes for removal. USCG would conduct an estimated 48 total days of pile driving activity (not all consecutive).

The proposed new piles would be 16-inch (-in) to 20-in steel pipe piles filled with concrete, and/or 14-in steel H-Piles, which would be installed by vibratory driving and driven to the final tip elevation by impact strikes after the initial vibratory set. The exact sizes and quantities of pipe piles are not certain at this time and would be determined through the remaining design iterations by the USCG. The modeled pile driving scenarios accounted for the energy needed to drive the piles and utilized 24-in diameter pile sizes for the model, as a worst case scenario option. USCG would only use a vibratory hammer for removal of the existing piles.

TABLE 1—PROPOSED PILE DRIVING

Method	Pile size and type	Activity duration	Number of piles	Estimated days of work
Impact install	24-in	45 blows per minute for 27 minutes (1,230 total blows)	79	28
	14 in H-pile	45 blows per minute for 13 minutes (570 total blows).		
Vibratory install	24-in	60 minutes	79	
Vibratory removal	24-in timber	15 minutes	71	20

The USCG has proposed in its description of the project that pile driving would occur only during daylight hours (no sooner than 30 minutes after sunrise through no later than 30 minutes before sunset). In addition, ODFW requires all in-water construction be limited to the months of November through February to minimize impacts to ESA listed fish species.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species).*

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality (M/SI) from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific Marine Mammal SARs. All values presented in table 2 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 2—MARINE MAMMAL SPECIES [1] LIKELY TO OCCUR NEAR THE PROJECT AREA THAT MAY BE TAKEN BY USCG'S ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Phocoenidae (porpoises):						
Harbor Porpoise	*Phocoena phocoena*	Central Oregon [5]	-, -, N	7,492 (0.421, 5,332, 2022).	53	0
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
CA Sea Lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>321

TABLE 2—MARINE MAMMAL SPECIES [1] LIKELY TO OCCUR NEAR THE PROJECT AREA THAT MAY BE TAKEN BY USCG'S ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Steller Sea Lion [6]	*Eumetopias jubatus*	Eastern	-, -, N	36,308 (N/A, 36,308, 2022).	2,178	93.2
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	OR/WA Coastal	-, -, N	UNK (UNK, UNK, 1999)	UND	10.6

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/; Committee on Taxonomy (2022)).
[2] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.
[3] NMFS marine mammal stock assessment reports online at: https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.
[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.
[5] New stock in 2023 SARs.
[6] Nest is best estimate of counts, which have not been corrected for animals at sea during abundance surveys. Estimates provided are for the U.S. only.

As indicated above, all four species (with four managed stocks) in table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the proposed survey areas are included in section 3 of the IHA application on page 12. While killer whales (*Orcinus orca*), humpback whales (*Megaptera novaeangliae*), and gray whales (*Eschrichtius robustus*) have been sighted off the Oregon coast, the USCG's project is located in the Siuslaw River where these species do not occur. Therefor the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here and in the USCG's application. For more details on the species that are likely to occur near the project area and may be taken by USCG's activities, see Sections 3 and 4 of USCG's IHA application, the SARs, and NMFS' website.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Generalized hearing ranges were chosen based on the ~65 decibel (dB) threshold from composite audiograms, previous analyses in NMFS (2018), and/or data from Southall *et al.* (2007) and Southall *et al.* (2019). We note that the names of two hearing groups and the generalized hearing ranges of all marine mammal hearing groups have been recently updated (NMFS 2024) as reflected below in in table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2024]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 36 kHz.
High-frequency (HF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
Very High-frequency (VHF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	200 Hz to 165 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	40 Hz to 90 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 68 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges may not be as broad. Generalized hearing range chosen based on ~65 dB threshold from composite audiogram, previous analysis in NMFS 2018, and/or data from Southall et al. 2007; Southall et al. 2019. Additionally, animals are able to detect very loud sounds above and below that ''generalized'' hearing range.

For more detail concerning these groups and associated frequency ranges, please see NMFS (2024) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding

the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activity can occur from impact and vibratory pile driving. The effects of underwater noise from USCG's proposed activities have the potential to result in Level A or Level B harassment of marine mammals in the action area.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include vibratory pile removal, and impact and vibratory pile driving. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; ANSI, 2005; NMFS, 2018a). Non-impulsive sounds (*e.g.,* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998; NMFS, 2018a). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

USCG proposes to use vibratory hammers to remove timber piles and impact and vibratory pile driving to install new steel pipe piles and/or H-piles associated with the Station Siuslaw River project. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

The likely or possible impacts of USCG's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of equipment and personnel; however, any impacts to marine mammals are expected to be primarily acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal.

Acoustic Effects

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal is the means by which marine mammals may be harassed from USCG's specified activity. In general, animals exposed to natural or anthropogenic sound may experience behavioral, physiological, and/or physical effects, ranging in magnitude from none to severe (Southall *et al.,* 2007, 2019). In general, exposure to pile driving noise has the potential to result in behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior) and, in limited cases, an auditory threshold shift (TS). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (TSs) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced TS as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018, 2024). The amount of TS is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018, 2024), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Auditory Injury and Permanent Threshold Shift (PTS)—NMFS defines auditory injury as ''damage to the inner ear that can result in destruction of

tissue . . . which may or may not result in PTS'' (NMFS, 2024). NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2024). PTS does not generally affect more than a limited frequency range, and an animal that has incurred PTS has incurred some level of hearing loss at the relevant frequencies; typically, animals with PTS are not functionally deaf (Au and Hastings, 2008; Finneran, 2016). Available data from humans and other terrestrial mammals indicate that a 40-dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum TS clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower $SEL_{cum,}$ the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum}, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in *Masking,* below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 2013). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. For cetaceans, published data on the onset of TTS are limited to captive bottlenose dolphin (*Tursiops truncatus*), beluga whale, harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*) (Southall *et al.,* 2019). For pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals (*Mirounga angustirostris*), bearded seals (*Erignathus barbatus*) and California sea lions (*Zalophus californianus*) (Kastak *et al.,* 1999, 2007; Kastelein *et al.,* 2019b, 2019c, 2021, 2022a, 2022b; Reichmuth *et al.,* 2019; Sills *et al.,* 2020). TTS was not observed in spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to single airgun impulse sounds at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). These studies examine hearing thresholds measured in marine mammals before and after exposure to intense or long-duration sound exposures. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times.

The amount and onset of TTS depends on the exposure frequency. Sounds at low frequencies, well below the region of best sensitivity for a species or hearing group, are less hazardous than those at higher frequencies, near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.,* a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.,* 2019a, 2019c). Note that in general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Mooney *et al.,* 2009; Finneran *et al.,* 2010; Kastelein *et al.,* 2014, 2015). This means that TTS predictions based on the total, cumulative SEL will overestimate the amount of TTS from intermittent exposures, such as sonars and impulsive sources. Nachtigall *et al.* (2018) describe measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca crassidens*)) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including odontocetes) might have anatomical specializations that might allow for conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures and placement of inner ear structures (Ketten *et al.,* 2021). Data available on noise-induced hearing loss for mysticetes are currently lacking (NMFS, 2018). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above that inducing mild TTS (*e.g.,* a 40-dB threshold shift approximates PTS onset (Kryter *et al.,* 1966; Miller, 1974), while a 6-dB threshold shift approximates TTS onset (Southall *et al.,* 2007, 2019). Based on data from

terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulsive sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007, 2019). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Activities for this project include impact and vibratory pile driving and vibratory removal. There would likely be pauses in activities producing the sound during each day. Given these pauses and the fact that many marine mammals are likely moving through the project areas and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving also has the potential to behaviorally disturb marine mammals. Generally speaking, NMFS considers a behavioral disturbance that rises to the level of harassment under the MMPA a non-minor response—in other words, not every response qualifies as behavioral disturbance, and for responses that do, those of a higher level, or accrued across a longer duration, have the potential to affect foraging, reproduction, or survival. Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses may include changing durations of surfacing and dives, changing direction and/or speed; reducing/increasing vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); eliciting a visible startle response or aggressive behavior (such as tail/fin slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006).

Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007, 2019; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) and Gomez *et al.* (2016) for reviews of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2004). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure.

As noted above, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; National Research Council (NRC), 2005). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (*e.g.,* seismic airguns) have been varied but often consist of avoidance behavior or other behavioral changes (Richardson *et al.,* 1995; Morton and Symonds, 2002; Nowacek *et al.,* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a, 2013b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. However, acoustic and movement bio-logging tools have been used in some cases, to infer responses of feeding to anthropogenic noise. For example, Blair *et al.* (2016) reported significant effects on humpback whale foraging behavior in Stellwagen Bank in response to ship noise including slower descent rates, and fewer side-rolling events per dive with increasing ship nose. In addition, Wisniewska *et al.* (2018) reported that tagged harbor porpoises demonstrated fewer prey capture attempts when encountering occasional high-noise levels resulting from vessel noise as well as more vigorous fluking, interrupted foraging, and cessation of echolocation signals observed in response to some high-noise vessel passes.

In response to playbacks of vibratory pile driving sounds, captive bottlenose dolphins showed changes in target detection and number of clicks used for

a trained echolocation task (Branstetter *et al.* 2018). Similarly, harbor porpoises trained to collect fish during playback of impact pile driving sounds also showed potential changes in behavior and task success, though individual differences were prevalent (Kastelein *et al.* 2019d). As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationships among prey availability, foraging effort and success, and the life history stage(s) of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007). For example, harbor porpoise' respiration rate increased in response to pile driving sounds at and above a received broadband SPL of 136 dB (zero-peak SPL: 151 dB re 1 µPa; SEL of a single strike: 127 dB re 1 μPa^2 -s) (Kastelein *et al.,* 2013).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996; Bowers *et al.,* 2018). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (England *et al.,* 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fishes and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than 1 day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive (*i.e.,* meaningful) behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its

energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals would experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Auditory Masking—Since many marine mammals rely on sound to find prey, moderate social interactions, and facilitate mating (Tyack, 2008), noise from anthropogenic sound sources can interfere with these functions, but only if the noise spectrum overlaps with the hearing sensitivity of the receiving marine mammal (Southall *et al.,* 2007; Clark *et al.,* 2009; Hatch *et al.,* 2012). Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking is when other noises such as from human sources interfere with an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions (Hotchkin and Parks, 2013).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003) or vocalizations (Foote *et al.,* 2004), respectively, while North Atlantic right whales (*Eubalaena glacialis*) have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). Fin whales have also been documented lowering the bandwidth, peak frequency, and center frequency of their vocalizations under increased levels of background noise from large vessels (Castellote *et al.* 2012). Other alterations to communication signals have also been observed. For example, gray whales, in response to playback experiments exposing them to vessel noise, have been observed increasing their vocalization rate and producing louder signals at times of increased outboard engine noise (Dahlheim and Castellote, 2016). Alternatively, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is human-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect (though not necessarily one that would be associated with harassment).

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2010; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Hotchkin and Parks, 2013). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Marine mammals at or near the proposed USCG project site may be exposed to anthropogenic noise which may be a source of masking. Vocalization changes may result from a need to compete with an increase in background noise and include increasing the source level, modifying the frequency, increasing the call repetition rate of vocalizations, or ceasing to vocalize in the presence of increased noise (Hotchkin and Parks, 2013). For example, in response to loud noise, beluga whales may shift the frequency of their echolocation clicks to prevent masking by anthropogenic noise (Tyack, 2000; Eickmeier and Vallarta, 2022).

Masking occurs in the frequency band or bands that animals utilize and is more likely to occur in the presence of broadband, relatively continuous noise sources such as vibratory pile driving. Energy distribution of pile driving covers a broad frequency spectrum, and sound from pile driving would be within the audible range of pinnipeds and cetaceans present in the proposed action area. While some construction during the USCG's activities may mask

some acoustic signals that are relevant to the daily behavior of marine mammals, the short-term duration and limited areas affected make it very unlikely that the fitness of individual marine mammals would be impacted.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with construction activities that have the potential to cause behavioral harassment, depending on their distance from these activities. Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above airborne acoustic harassment criteria. Although pinnipeds are known to haul-out regularly on man-made objects, we believe that incidents of take resulting solely from airborne sound are unlikely given there are no known pinniped haulout or pupping sites within the close vicinity of the proposed project area; the nearest known pinniped haulout is located approximately 400 m from the project site for harbor seals. The USCG evaluated the potential for airborne acoustic effects and these known pinniped sites were outside the area of disturbance. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been ''taken'' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further.

Marine Mammal Habitat Effects

The project would occur near an active marine commercial and industrial area. Construction activities at the Station Siuslaw River could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water SPLs and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see *Auditory Masking* discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During vibratory and impact pile driving, elevated levels of underwater noise would ensonify a portion of the Siuslaw River, where both fish and some mammals occur and could affect foraging success.

Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound. These sounds would not be detectable at the nearest known sea lion and harbor sea haulouts, which are beyond the maximum distance of predicted in-air acoustical disturbance.

Water Quality—Temporary and localized reduction in water quality would occur as a result of in-water construction activities. Most of this effect would occur during the installation and removal of piles when bottom sediments are disturbed. The installation and removal of piles would disturb bottom sediments and may cause a temporary increase in suspended sediment in the project area. During pile removal, sediment attached to the pile moves vertically through the water column until gravitational forces cause it to slough off under its own weight. The small resulting sediment plume is expected to settle out of the water column within a few hours. Studies of the effects of turbid water on fish (marine mammal prey) suggest that concentrations of suspended sediment can reach thousands of milligrams per liter before an acute toxic reaction is expected (Burton, 1993).

Effects to turbidity and sedimentation are expected to be short-term, minor, and localized. Suspended sediments in the water column should dissipate and quickly return to background levels in all construction scenarios. Turbidity within the water column has the potential to reduce the level of oxygen in the water and irritate the gills of prey fish species in the proposed project area. However, turbidity plumes associated with the project would be temporary and localized, and fish in the proposed project area would be able to move away from and avoid the areas where plumes may occur. Therefore, it is expected that the impacts on prey fish species from turbidity, and therefore on marine mammals, would be minimal and temporary. In general, the area likely impacted by the proposed construction activities is relatively small compared to the available marine mammal habitat off the Coast of Oregon, and does not include any areas of particular importance.

In-Water Construction Effects on Potential Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have

shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More commonly, though, the impacts of noise on fish are temporary.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The greatest potential impact to fishes during construction would occur during impact pile installation of 24-in steel pipe piles, which is estimated to occur on up to 28 days for a maximum of 1,230 strikes per day. In-water construction activities would only occur during daylight hours, allowing fish to forage and transit the project area in the evening. Vibratory pile driving would possibly elicit behavioral reactions from fishes such as temporary avoidance of the area but is unlikely to cause injuries to fishes or have persistent effects on local fish populations. Construction also would have minimal permanent and temporary impacts on benthic invertebrate species, a marine mammal prey source. In addition, it should be noted that the area in question is low-quality habitat since it is already highly developed and experiences a high level of anthropogenic noise from normal operations and other vessel traffic. In general, any negative impacts on marine mammal prey species are expected to be minor and temporary.

Fish populations in the proposed project area that serve as marine mammal prey could be temporarily affected by noise from pile installation and removal. The frequency range in which fishes generally perceive underwater sounds is 50 to 2,000 Hz, with peak sensitivities below 800 Hz (Popper and Hastings, 2009). Fish behavior or distribution may change, especially with strong and/or intermittent sounds that could harm fishes. High underwater SPLs have been documented to alter behavior, cause hearing loss, and injure or kill individual fish by causing serious internal injury (Hastings and Popper, 2005).

The most likely impact to fish from pile driving activities in the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of individual pile driving events. Additionally, ODFW has a pile driving construction window (November 1, 2025 through February 28, 2026) to further reduce effects of the proposed project on fish species.

In-Water Construction Effects on Potential Foraging Habitat—The area likely impacted by the project is relatively small compared to the available habitat on the coast of Oregon and does not include any BIAs or ESA-designated critical habitat. The total area affected by pile installation and removal and the new footprint is small compared to the vast foraging area available to marine mammals in the area. Pile driving and removal at the project site would not obstruct long-term movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish and marine mammal avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by fish or marine mammals of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent adverse effect on any fish habitat, or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform NMFS' consideration of ''small numbers,'' the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (AUD INJ) (Level A harassment) to result, primarily for very high frequency species and phocids because predicted AUD INJ zones are larger than for high-frequency species and otariids. AUD INJ is unlikely to occur for high-frequency species and otariids. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable. As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic criteria above which NMFS believes the best available science indicates marine mammals would likely be behaviorally harassed or incur some degree of AUD INJ; (2) the area or volume of water that would be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group

size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Criteria

NMFS recommends the use of acoustic criteria that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur AUD INJ of some degree (equated to Level A harassment). We note that the criteria for AUD INJ, as well as the names of two hearing groups, have been recently updated (NMFS 2024) as reflected below in the Level A Harassment section.

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

USCG's proposed activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μPa are applicable.

Level A harassment—NMFS' Updated Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 3.0) (Updated Technical Guidance, 2024) identifies dual criteria to assess AUD INJ (Level A harassment) to five different underwater marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). USCG's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

The 2024 Updated Technical Guidance criteria include both updated thresholds and updated weighting functions for each hearing group. The thresholds are provided in the table below. The references, analysis, and methodology used in the development of the criteria are described in NMFS' 2024 Updated Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance-other-acoustic-tools.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF AUDITORY INJURY

Hearing group	AUD INJ onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 222 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 197 dB.
High-Frequency (HF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,HF,24h}$: 193 dB	*Cell 4:* $L_{E,HF,24h}$: 201 dB.
Very High-Frequency (VHF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,VHF,24h}$: 159 dB	*Cell 6:* $L_{E,VHF,24h}$: 181 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 223 dB; $L_{E,PW,24h}$: 183 dB	*Cell 8:* $L_{E,PW,24h}$: 195 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 230 dB; $L_{E,OW,24h}$: 185 dB	*Cell 10:* $L_{E,OW,24h}$: 199 dB.

* Dual metric criteria for impulsive sounds: Use whichever criteria results in the larger isopleth for calculating AUD INJ onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level criteria associated with impulsive sounds, the PK SPL criteria are recommended for consideration for non-impulsive sources.

Note: Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1 μPa^2s. In this table, criteria are abbreviated to be more reflective of International Organization for Standardization (ISO) standards (ISO 2017; ISO 2020). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals underwater (*i.e.,* 7 Hz to 165 kHz). The subscript associated with cumulative sound exposure level criteria indicates the designated marine mammal auditory weighting function (LF, HF, and VHF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level criteria could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these criteria will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss.

The USCG opted to perform its own acoustic modeling for the Level A and Level B harassment isopleths using dBSea, a software developed by Marshall Day Acoustics for the modeling of underwater sound propagation in a variety of environments. Use of this model allowed USCG to incorporate site-specific information, therefore providing more accurate results than other more generalized tools. dBSea was also used in a previous construction project by the USCG (88 FR 77985, November 11, 2023). NMFS has reviewed USCG's modeling and determined that it is acceptable for use here.

Marshall Day Acoustics built the model by importing bathymetry data and placing noise sources in the

environment. Each source can consist of equipment chosen from either the standard or the user-defined databases. Noise mitigation methods may also be included. The user has control over the seabed and water properties including sound speed profile, temperature, salinity, and current. To examine results in more detail, the model allows users to plot noise levels in cross sections, or extract a detailed spectrum at any point in the calculation area. USCG calculated noise levels to the deepest depth within the project area.

USCG derived representative acoustic modeling scenarios based on descriptions of the expected construction activities through consultations between the USCG project design and engineering teams. The team modeled activities that are expected to result in take of marine mammals (*i.e.,* in-water pile driving and removal) at a location with characteristics representative of the project site. The USCG modeled the full range of potential water depths in the project area at a single representative location. As described in the *Detailed Description of the Specified Activity* section above, USCG may install a variety of pile types and sizes, and the exact pile sizes have not yet been determined. However, in an effort to avoid underestimating potential impacts to marine mammals, USCG conducted its analysis using the maximum possible pile size for each project use. Table 5 lists the sound source levels for each activity that USCG incorporated into the model. Table 6 shows the model-estimated Level A and Level B harassment isopleths for the proposed activities. Please refer to the Acoustic Assessment included in USCG's IHA application for additional details on the modeling principles and assumptions and a summary of construction and operational scenarios included in the underwater acoustic modeling analysis.

TABLE 5—ESTIMATES OF UNDERWATER SOUND SOURCES * GENERATED DURING VIBRATORY AND IMPACT PILE INSTALLATION AND VIBRATORY PILE REMOVAL

Pile driving method	Pile type and size	db RMS	dB peak	db SEL	Reference
Impact installation	Steel pipe pile 24-in	194	207	178	Caltrans 2020.
	H-pile	178	200	166	Caltrans 2020.
Vibratory installation	Steel pipe pile 24-in	165	.....	.....	Caltrans 2020.
Vibratory removal	Timber	162	.....	.....	Caltrans 2020.

Note: dB peak = peak sound level; rms = root mean square; SEL = sound exposure level.
* All sound levels are referenced at 10 m.

TABLE 6—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS

Size and type	Level A isopleth (m)			Level B isopleth (m)
	VHF	Phocids	Otariids	
Vibratory Installation and Removal				
24-in steel pipe pile installation	58	39	17	1,117
Timber removal	16	14	.....	1,106
Impact Installation				
24-in steel pipe pile	335	256	95	717
H-pile	96	35	18	110

Marine Mammal Occurrence and Take Calculation and Estimation

In this section, we provide information about the occurrence of marine mammals, including density or other relevant information which would inform the take calculations and describe how the information provided is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization. The USCG proposed using marine mammal species densities from the Pacific Navy Marine Species Density Database to estimate take for marine mammals. This database incorporates analyzed literature and research for marine mammal density estimates per season for regions throughout the U.S., and the USCG based their take estimates on regionally available population density estimates and site-specific knowledge. Although this database provides densities for all species present in the action area, the densities are based on offshore abundance and not directly relevant to occurrence within in the Siuslaw River. Following careful review of the analysis presented by the USCG in its application, including marine mammal occurrence data, NMFS has determined that different information inputs than those selected by the USCG, represent the best available scientific information for marine mammal abundance in the action area. These selections are discussed in greater detail below.

For all species, the numbers of individuals are based on average group sizes from Bates *et al.,* 2023, that described marine mammal occurrences near Coos Bay, Oregon in 2014 and 2015. While Coos Bay is south of the action area, this area is more representative of the action area within the Siuslaw River than the offshore data in the application. We derived potential take estimates from the average group sizes recorded over the specified period in Bates *et al.,* 2023 and used the occurrences of these sightings during the surveys, along with sightings in OBIS–SEAMAP around the action area, to estimate our sighing rates in the project vicinity (table 7).

TABLE 7—SPECIES RATE IN THE ACTION AREA

Species	Average group size	Sighting rate for action area
California sea lion	1.4	Group every other day.
Steller sea lion	1.8	Group every other day.
Harbor seal	1	2 groups/day.
Harbor porpoise	1.3	Group every other day.

To calculate the total estimated takes by Level B harassment, we multiplied the estimated days of activity by the associated average group size and sighting rate for each species (table 7). There is also some potential for take by Level A harassment of harbor seal and harbor porpoise during impact pile driving due to the largest zones of each species being greater than the shutdown zones and because of the cryptic nature and assumed lower detectability of these species.

Based on the relative proportion of the area expected to be ensonified above the Level A harassment threshold for phocids from impact pile driving (approximately 0.14 square kilometers (km^2)) to the area ensonified above the Level B harassment threshold (0.59 km^2 for impact pile driving), we estimated that of the total number of harbor seals that may be located within the greater Level B harassment zone, approximately 24 percent would enter the smaller Level A harassment zone (256 m) and stay in the zone long enough to incur auditory injury. Thus, we assume that 24 percent of the total estimated takes of harbor seals (96 individuals; see table 8) would be by Level A harassment. Therefore, we are proposing to authorize 23 takes of harbor seals by Level A harassment and 73 takes by Level B harassment (table 8). Take by Level A harassment for harbor porpoise was calculated in the same way as for harbor seals. For otarrids, we are not proposing to authorize take by Level A harassment as the shutdown zones are much larger than the Level A harassment zones for most activities, and the likely occurrence of otariids in the action area is much lower than for harbor porpoise and harbor seals.

TABLE 8—PROPOSED TAKE OF MARINE MAMMALS BY LEVEL A AND LEVEL B HARASSMENT BY SPECIES AND STOCK AND PERCENT OF STOCK ABUNDANCE

Species	Stock	Proposed take by Level A harassment	Proposed take by Level B harassment	Total proposed take	Percent of stock taken
California sea lion	U.S	0	34	34	<0.1
Steller sea lion	Eastern	0	43	43	0.1
Harbor seal	Oregon/Washington Coast	23	73	96	0.4
Harbor porpoise	Central Oregon	11	20	31	0.4

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

1. The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure would be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

2. The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

USCG must ensure that construction supervisors and crews, the monitoring team, and relevant USCG staff are trained prior to the start of all pile driving activity, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.

Pre- and Post-Activity Monitoring

- Monitoring must take place from 30 minutes prior to initiation of pile driving activity (*i.e.,* pre-clearance monitoring) through 30 minutes post-completion of pile driving activity;
- Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in table 9 are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals;

Soft Start

- USCG must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30 second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time

following cessation of impact pile driving for a period of 30 minutes or longer; and

Shutdown Zones

USCG would establish shutdown zones for all pile driving activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area).

If a marine mammal is observed entering or within the shutdown zones indicated in table 9, pile driving must be delayed or halted. For in-water heavy machinery activities other than pile driving, if a marine mammal comes within 10 m, work would stop and vessels would reduce speed to the minimum level required to maintain steerage and safe working conditions. A 10 m shutdown zone would also serve to protect marine mammals from physical interactions with project vessels during pile driving and other construction activities, such as barge positioning or drilling. If an activity is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in table 9 or 15 minutes have passed without re-detection of the animal. Construction activities must be halted upon observation of a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met entering or within the harassment zone.

All marine mammals would be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, in-water activities would continue and the animal's presence within the estimated harassment zone would be documented.

USCG would also establish shutdown zones for all marine mammals for which take has not been authorized or for which incidental take has been authorized but the authorized number of takes has been met. These zones are equivalent to the Level B harassment zones for each activity. If a marine mammal species for which take is not authorized by this IHA enters the shutdown zone, all in-water activities would cease until the animal leaves the zone or has not been observed for at least 15 minutes, and USCG would notify NMFS about the species and precautions taken. Pile driving would proceed if the non-IHA species is observed to leave the Level B harassment zone or if 15 minutes have passed since the last observation.

If shutdown and/or clearance procedures would result in an imminent safety concern, as determined by USCG or its designated officials, the in-water activity would be allowed to continue until the safety concern has been addressed, and the animal would be continuously monitored.

TABLE 9—SHUTDOWN ZONES AND LEVEL B HARASSMENT ZONES

Activity	Minimum shutdown zone (m)			Level B harassment zone (m)
	VHF cetaceans	Phocid	Otariid	
Vibratory Removal	20	20	10	1,110
Vibratory Installation	60	40	20	1,120
Impact Installation	200	100	100	720

Protected Species Observers (PSOs)

The placement of PSOs during all construction activities (described in the Monitoring and Reporting section) would ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving would be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

The USCG must employ PSOs and establish monitoring locations as described in the application and the IHA. PSOs would monitor the full shutdown zones and the Level B harassment zones to the extent practicable. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Bubble Curtain

A bubble curtain must be employed during all impact pile installation. The bubble curtain must be deployed in manner guaranteed to distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. The lowest bubble ring must be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring must ensure 100 percent mudline contact. No parts of the ring or other objects may prevent full mudline contact. Air flow to the bubblers must be balanced around the circumference of the pile.

Based on our evaluation of USCG's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that would result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which

take is anticipated (*e.g.,* presence, abundance, distribution, density);

- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the conditions in this section and the IHA. Marine mammal monitoring during pile driving activities would be conducted by PSOs meeting the following requirements:

- PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods;
- At least one PSO would have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization; and
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator would be designated. The lead observer would be required to have prior experience performing the duties of a PSO during construction activities pursuant to a NMFS-issued incidental take authorization.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

USCG must assign a minimum of two PSOs to monitor during pile driving. One PSO must be stationed at the pile driving site, and the second PSO must be stationed at the best practicable location for monitoring the Level A and Level B harassment zones. Possible PSOs locations include the staging barges, on shore at the project site, or at the entrance to the commercial dock area at ETP. All PSOs would have access to high-quality binoculars, range finders to monitor distances, and a compass to record bearing to animals as well as radios or cells phones for maintaining contact with work crews.

Monitoring would be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, PSOs would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

USCG shall conduct briefings between construction supervisors and crews, PSOs, USCG staff prior to the start of all pile driving activities and when new personnel join the work. These briefings would explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance from any future IHAs for projects at the same location, whichever comes first. The report would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact) and the total equipment duration for vibratory removal for each pile or total number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information: (1) Name of PSO who sighted the animal(s) and PSO location and activity at the time of sighting; (2) Time of sighting; (3) Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentifiable), PSO confidence in identification, and the composition of the group if there is a mix of species; (4) Distance and bearing of each marine mammal observed relative to the pile being driven for each sightings (if pile driving was occurring at time of sighting); (5) Estimated number of animals (min/max/best estimate); (6) Estimated number of animals by cohort (adults, juveniles, neonates, group composition, sex class, *etc.*); (7) Animal's closest point of approach and estimated time spent within the harassment zone; (8) Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

• Number of marine mammals detected within the harassment zones and shutdown zones; by species; and

• Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensured, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final report would constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the USCG must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, USCG must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The USCG must not resume their activities until notified by NMFS. The report must include the following information:

• Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

• Species identification (if known) or description of the animal(s) involved;

• Condition of the animal(s) (including carcass condition if the animal is dead);

• Observed behaviors of the animal(s), if alive;

• If available, photographs or video footage of the animal(s); and

• General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in table 2 for which take could occur, given that NMFS expects the anticipated effects of the proposed pile driving and removal on different marine mammal stocks to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

Pile driving activities associated with the USCG construction project have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A and Level B harassment, from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The takes by Level B harassment would be due to potential behavioral disturbance and TTS. Takes by Level A harassment would be due to auditory injury. No serious injury or mortality would be expected, even in the absence of required mitigation measures, given the nature of the activities. The potential for harassment would be further minimized through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation section). Take by Level A harassment is proposed for harbor seals and harbor porpoise to account for the possibility that an animal could enter a Level A harassment zone prior to detection, and remain within that zone for a duration long enough to incur auditory injury before being observed and the USCG shutting down pile driving activity. The Level A harassment zones identified in table 6 are based upon an animal's exposure to pile driving of up to three of the largest steel piles per day. Given the short duration to vibratory or impact drive each pile and break between pile installations (to reset equipment and move piles into place), an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. This is highly unlikely given marine mammal movement in the area. The number of takes by Level A harassment proposed for authorization is very low for both marine mammal species. Any take by Level A harassment is expected to arise from, at most, a small degree of auditory injury, *i.e.,* minor degradation (likely only a few dB) of hearing capabilities within regions of hearing that align most completely with the energy produced by vibratory and impact pile driving (*i.e.* the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of auditory injury. Due to the small degree anticipated, any auditory injury incurred would not be expected to affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

Additionally, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. However, since the hearing sensitivity of individuals that incur TTS is expected to recover completely within minutes to hours, it is unlikely that the brief hearing impairment would affect the individual's long-term ability to forage and communicate with conspecifics, and would therefore not likely impact reproduction or survival of any individual marine mammal, let alone adversely affect rates of recruitment or survival of the species or stock.

Behavioral responses of marine mammals to pile driving in the Siuslaw River are expected to be mild, short

term, and temporary. Marine mammals within the Level B harassment zones may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable, such as changes in vocalization patterns. Given that pile driving would occur for only a portion of the project's duration, any harassment occurring would be temporary. Additionally, many of the species present in region would only be present temporarily based on seasonal patterns or during transit between other habitats. These temporarily present species would be exposed to even smaller periods of noise-generating activity, further decreasing the impacts.

Any impacts on marine mammal prey that would occur during USCG's proposed activity would have, at most, short-term effects on foraging of individual marine mammals, and likely no effect on the populations of marine mammals as a whole. Indirect effects on marine mammal prey during the construction are expected to be minor, and these effects are unlikely to cause substantial effects on marine mammals at the individual level, with no expected effect on annual rates of recruitment or survival.

For all species and stocks, take would occur within a limited, confined area (adjacent to the project site) of the stock's range, and, there are no known BIAs near the project area that would be impacted by USCG's proposed activities. While harbor seal is the species most likely to occur within the immediate project area, the nearest haul out is outside of the ensonified areas. There are known haul out sites for harbor seals near the project area including across the river and upriver from the action area, the closest being 400 m from the project area. Although, the most recent survey taken of this area was in 2014. There are no other haul outs in the immediate project vicinity; the next closest haulout is 129 km away.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the reproduction or survival of any individuals, much less the stocks' annual rates of recruitment or survival. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities would have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and would therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or proposed to be authorized;
- Take by Level A harassment is proposed for harbor seal and harbor porpoise only and would be very small amounts and of a low degree;
- For all species and stocks, the Siuslaw River is a very small and peripheral part of their range;
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks. Level B harassment would be primarily in the form of behavioral disturbance, resulting in avoidance of the project areas around where impact or vibratory pile driving is occurring, with some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints of the activities;
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations;
- The project area does not overlap any areas of known important habitat for marine mammals;
- The ensonified areas are very small relative to the overall habitat ranges of all species and stocks; and
- The lack of anticipated significant or long-term negative effects to marine mammal habitat.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activities would have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities. For all species, the proposed take is below one third of the population for all marine mammal stocks (table 8).

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to USCG for conducting pile driving activities associated with the Station Siuslaw River project in Florence Oregon from November 1, 2025 through October 31, 2026, provided the previously mentioned mitigation,

monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed construction project. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: January 15, 2025.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2025–01383 Filed 1–17–25; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE618]

Marine Mammals; File Nos. 28286 and 22095

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

ACTION: Notice; extension of comment period and proposed permit extension.

SUMMARY: Notice is hereby given that the National Marine Fisheries Service is extending the public comment period associated with the notice of receipt for an application for a permit (File No. 28286) to conduct research and enhancement activities on one stranded, non-releasable beluga whale (*Delphinapterus leucas*) from the endangered Cook Inlet distinct population segment (DPS). The application has been updated to reflect additional information received from the applicant. Additionally, we propose extending SeaWorld's current permit, No. 22095–01, under which the subject beluga whale is currently held, for six months to allow additional processing of the updated application (File No. 28286).

DATES: The comment period for the notice published December 17, 2024, at 89 FR 102117, is extended. Written comments must be received on or before March 3, 2025.

ADDRESSES: The application for a new permit and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 28286 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application (File No. 28286) and the proposed extension to Permit No. 22095–01 should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File Nos. 28286 and 22095, respectively, in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Courtney Smith, Ph.D., or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On December 17, 2024 (89 FR 102117), the National Marine Fisheries Service (NMFS) published notice of a permit application (File No. 28286) submitted by SeaWorld LLC, 6240 Sea Harbor Drive, Orlando, FL 32821 (Responsible Party: Chris Dold, DVM).

The applicant proposes to conduct research and enhancement activities on and provide long-term care for one male beluga whale (NOA0010477/''Tyonek'') from the depleted and endangered Cook Inlet DPS. The permit is requested for a 5-year period. NMFS received a request for an extension of the public comment period. Additionally, NMFS received updated information from the applicant in response to preliminary questions from the Marine Mammal Commission (MMC), clarifying research sampling and enhancement activity details in the take tables, educational programs, and captive breeding of the subject whale. These changes have been incorporated into the application in APPS (see also new uploaded document, ''28286_ Response to MMC Comments_ 1.2.2024.pdf''. In addition, NMFS is proposing to extend SeaWorld's current research and enhancement permit for Tyonek, No. 22095–01 (75 FR 27418, April 17, 2024), for six months to allow additional processing of the updated application (File No. 28286). That extended permit would expire on September 15, 2025. Thus, NMFS is extending the public comment period for an additional 30 days.

Dated: January 14, 2025.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2025–01282 Filed 1–17–25; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE554]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that NMFS has issued a Letter of Authorization (LOA) to bp Exploration and Production, Inc., (bp) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico (GOM).

DATES: The LOA is effective from January 14, 2025, through December 31, 2025.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT** section).

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in U.S. waters of the GOM over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses, and became effective on April 19, 2021.

The regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

NMFS subsequently discovered that the 2021 rule was based on erroneous take estimates. We conducted another rulemaking using correct take estimates and other newly available and pertinent information relevant to the analyses supporting some of the findings in the 2021 final rule and the taking allowable under the regulations. We issued a final rule in April 2024, effective May 24, 2024 (89 FR 31488, April 24, 2024).

The 2024 final rule made no changes to the specified activities or the specified geographical region in which those activities would be conducted, nor to the original 5-year period of effectiveness. In consideration of the new information, the 2024 rule presented new analyses supporting affirmance of the negligible impact determinations for all species, and affirmed that the existing regulations, which contain mitigation, monitoring, and reporting requirements, are consistent with the ''least practicable adverse impact'' standard of the MMPA.

Summary of Request and Analysis

Bp plans to conduct a field trial of a marine vibrator source (C–BASS) array in the Atlantis prospect area centered around Green Canyon block 743 for a duration of up to 14 days, with water depths ranging from approximately 1,300 to 2,200 m. See figure 1 of the LOA application for a map of the area.

The marine vibrator source was not included in the acoustic exposure modeling developed in support of the rule. However, our rule anticipated the possibility of new and unusual technologies (NUT) and determined they would be evaluated on a case-by case basis (see 86 FR 5322, 5442, January 19, 2021).

Marine vibrator sources represent an alternative to traditional airgun sources, and operate by displacing a volume of water with a vibrating plate or shell to create a pressure wave. In contrast to airgun sources, marine vibrators produce a long duration, low amplitude signal and operate at a lower peak intensity. The C–BASS source consists of two types of sweep units: six M72–15 and two M72–30, comprising eight total source units mounted on a tow body. Both sets of units (M72–15 and M72–30) will sweep for 8 seconds (s), with the two signals overlapping. The M72–30 signal will lag the M72–15 by 0.5 s. The total sweep cycle will be repeated every 16 s with a 7.5 s quiet period in between sweeps. The dominant frequencies of the C–BASS sweep are between 10–50 Hz, with minimal signal energy occurring above

100 Hz. Marine vibrator sources, including the C–BASS, produce signals with a relatively gentle rise and decay over time and are therefore considered to be non-impulsive. The usage characteristics described above, which equate to a duty cycle of 53 percent and allow for periods of silence between each signal, result in evaluation of the C–BASS as an intermittent source for purposes of the planned trial. Please see bp's application for additional detail.

Use of a relatively low-intensity, non-impulsive source such as the C–BASS is likely to result in significantly less take by Level B harassment than would occur for a similar survey using an airgun array as a sound source, and use of the C–BASS source is unlikely to result in any potential for Level A harassment. In order to demonstrate this, bp provided an exposure modeling report in association with its LOA application. The exposure modeling effort was performed using the same modeling approach as was used in support of the 2021 and 2024 rules. Modeling of the C–BASS source compared with the same 5,110 cubic inch (in^3) airgun array used for additional exposure modeling for the 2024 rule illustrates a reduction in estimated Level B harassment distance of over 98 percent, with acoustic exposures above harassment criteria associated with use of the C–BASS source generally less than 1 percent those associated with use of the airgun array. Please bp's exposure modeling report for more detail.

Based on this information we have determined there will be no effects of a magnitude or intensity different from those evaluated in support of the rules. NMFS therefore expects that use of modeling results supporting the final rule are conservative as a proxy for use in evaluating potential impacts of use of the marine vibrator source.

We also note that for the marine vibrator source, the Bureau of Ocean Energy Management (BOEM) determined that Endangered Species Act (ESA) section 7 step-down review was required under NMFS' 2020 Biological Opinion on Federally Regulated Oil and Gas Program Activities in the Gulf of Mexico. NMFS' ESA Interagency Consultation Division requested and received an analysis from BOEM that considered the effects associated with the source. As a result of this review, NMFS determined that use of the source is unlikely to result in additional effects beyond those previously considered in the 2020 Biological Opinion.

The survey effort proposed by bp in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in our rule preamble (89 FR 31488, April 24, 2024). In order to generate the appropriate take number for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; (4) source; and (5) month.[2] In this case, the 4,130 in^3 airgun array was selected, as its use for purposes of generating take numbers for authorization represents the least impactful airgun array (but remains conservative for use in estimating takes that are expected to result from use of the C–BASS source, as discussed above). The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled source and survey type in each zone and month.

Summary descriptions of modeled survey geometries are available in the preamble to the 2018 proposed rule (83 FR 29212, 29220, June 22, 2018). Coil was selected as the best available proxy survey type in this case because this selection minimizes over-estimation of take. Although bp is not proposing to perform a survey using the coil geometry, the coil proxy is most representative of the effort planned by bp in terms of predicted Level B harassment exposures.

The survey will include up to 14 days of sound source operation in zones 5 and 7. We assume equal distribution of survey effort over the two zones. Although the survey is currently planned to occur in March 2025, the actual timing is not known in advance, so take estimates for each species are based on the time period that produces the greatest value.

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See table 1 in this notice and table 6 of the 2024 final rule (89 FR 31488, April 24, 2024).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small (89 FR 31535, April 24, 2024). For more information please see NMFS' discussion of small numbers in the 2021 final rule (86 FR 5438, January 19, 2021).

The take numbers for authorization, determined as described above in the Summary of Request and Analysis section, are used by NMFS in making the necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). Information supporting the small numbers determinations is provided in table 1.

TABLE 1—TAKE ANALYSIS [1]

Species	Authorized take	Abundance [2]	Percent abundance
Rice's whale	0	51	n/a
Sperm whale	102	3,007	3.4
Kogia spp.	[3] 50	980	5.1
Beaked whales	248	803	30.9
Rough-toothed dolphin	254	4,853	5.2

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] Acoustic propagation modeling was performed for two seasons: winter (December-March) and summer (April-November). Marine mammal density data is generally available on a monthly basis, and therefore further refines take estimates temporally.

TABLE 1—TAKE ANALYSIS [1]—Continued

Species	Authorized take	Abundance [2]	Percent abundance
Bottlenose dolphin	210	165,125	0.1
Clymene dolphin	308	4,619	6.7
Atlantic spotted dolphin	62	21,506	0.3
Pantropical spotted dolphin	2,989	67,225	4.4
Spinner dolphin	[4] 152	5,548	2.7
Striped dolphin	892	5,634	15.8
Fraser's dolphin	102	1,665	6.1
Risso's dolphin	73	1,974	3.7
Blackfish [5]	704	6,113	11.5
Short-finned pilot whale	82	2,741	3.0

[1] Scalar ratios were not applied in this case due to brief survey duration.
[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Garrison *et al.,* 2023). For Rice's whale, Atlantic spotted dolphin, and Risso's dolphin, the larger estimated SAR abundance estimate is used.
[3] Estimated takes include 3 takes by Level A harassment and 47 takes by Level B harassment. However, as the actual source planned for use is a non-impulsive source, no take by Level A harassment is likely to occur and all authorized takes are by Level B harassment.
[4] Modeled take of 53 increased to account for potential encounter with a group of average size (Maze-Foley and Mullin, 2006).
[5] The ''blackfish'' guild includes melon-headed whales, false killer whales, pygmy killer whales, and killer whales.

Based on the analysis contained herein of bp's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to bp authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: January 15, 2025.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2025–01369 Filed 1–17–25; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Application for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to State Entities (State Entity)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for fiscal year (FY) 2025 for CSP Grants to State Entities.

DATES:

Applications Available: January 21, 2025.

Deadline for Transmittal of Applications: April 21, 2025.

Deadline for Intergovernmental Review: June 20, 2025.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 23, 2024 (89 FR 104528), and available at *https://www.federalregister.gov/documents/2024/12/23/2024-30488/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

FOR FURTHER INFORMATION CONTACT: Sareeta Schmitt, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–5970. Telephone: (202) 205–0730. Email: *SE_Competition@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The CSP State Entity program, ALN 84.282A, is authorized under Title IV, Part C of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA) (20 U.S.C. 7221–7221j). Through the CSP State Entity competition, the Department awards grants to *State entities* [1] that, in turn, award subgrants to *eligible applicants* for the purpose of opening and preparing for the operation of new *charter schools* and replicated *high-quality charter schools,* and expanding high-quality charter schools. State entities also may use grant funds to provide technical assistance to eligible applicants and *authorized public chartering agencies* in opening and preparing for the operation of new charter schools and replicated high-quality charter schools, and expanding high-quality charter schools; and to work with authorized public chartering agencies in the *State* to improve authorizing quality, including developing capacity for, and conducting, fiscal oversight and auditing of charter schools. State Entity grant funds may also be used for grant administration, which may include technical assistance and monitoring of subgrants for performance and fiscal and regulatory compliance, as required under 2 CFR 200.332(e).

The CSP State Entity program provides financial assistance to State entities to support charter schools that serve elementary and secondary school students in States with a specific State statute authorizing the granting of charters to schools. Charter schools receiving funds under the CSP State Entity program may also serve students in *early childhood education programs* or postsecondary students.

Assistance Listing Number: 84.282A.

OMB Control Number: 1810–0767.

Background: The major purposes of the CSP are to expand opportunities for

[1] Terms defined in this notice are italicized the first time they are used.

all students, particularly traditionally underserved students, to attend high-quality public charter schools and meet challenging State academic standards; provide financial assistance for the planning, program design, and initial implementation of charter schools; increase the number of high-quality charter schools available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other public schools; encourage States to provide facilities support to charter schools; and support efforts to strengthen the charter school authorizing process.

''Raise the Bar: Lead the World'' (RTB) is the Department's call to action to all stakeholders to transform pre-kindergarten through postsecondary education and unite around evidence-based strategies that advance educational equity and excellence for all students.[2] When we raise the bar in education, all our Nation's students will be able to build the skills to thrive inside and outside of school. As part of the RTB initiative, the Department is focusing on six strategies aimed at promoting academic excellence and wellness for every learner and better preparing our Nation for global competitiveness.[3] This competition advances several RTB strategies, most notably those intended to deliver a comprehensive and rigorous education for every student.

Further, on July 6, 2022 (87 FR 40406), the Department published in the **Federal Register** a notice of final priorities, requirements, definitions, and selection criteria (2022 NFP). The 2022 NFP supplements the program statute and is intended to help support the creation, replication, and expansion of high-quality charter schools that promote positive student outcomes, *educator* and community empowerment, promising practices, and school diversity. The 2022 NFP promotes greater fiscal and operational transparency and accountability for CSP-funded charter schools. The application requirements and assurances associated with subgrant monitoring and the review of subgrant applications help facilitate the proper peer review and evaluation of CSP grant applications. The priorities, application requirements, assurances, selection criteria, and definitions in this notice are designed to support access to high-quality, diverse, and equitable learning opportunities, which should be a goal of all public schools.

Priorities: This notice includes one absolute priority, five competitive preference priorities, and two invitational priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority and competitive preference priorities are from section 4303(g)(2) of the ESEA (20 U.S.C. 7221b(g)(2)).

Absolute Priority: For FY 2025, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet the absolute priority.

This priority is:

Best Practices for Charter School Authorizers.

To meet this priority, the State entity must demonstrate that it has taken steps to ensure that all authorized public chartering agencies[4] implement best practices for charter school authorizing.

Competitive Preference Priorities: For FY 2025, and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award 1 additional point to an application that meets Competitive Preference Priority 1; up to 2 additional points depending on how well an application meets Competitive Preference Priority 2; up to 2 additional points depending on how well an application meets Competitive Preference Priority 3; up to 2 additional points depending on how well an application meets Competitive Preference Priority 4; and up to 3 additional points depending on how well an application meets Competitive Preference Priority 5.

An applicant must identify in the abstract form and in the project narrative section of its application the priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points. The Department will not review or award points for any competitive preference priority that an applicant fails to clearly identify as a competitive preference priority that it wishes the Department to consider for purposes of awarding competitive preference priority points. An application may receive a maximum of 10 additional points under the competitive preference priorities.

These priorities are:

Competitive Preference Priority 1—At Least One Authorized Public Chartering Agency Other than a Local Educational Agency, or an Appeals Process (0 or 1 point).

To meet this priority, the State entity must demonstrate that it is located in a State that—

(a) Allows at least one entity that is not a local educational agency (LEA) to be an authorized public chartering agency for *developers* seeking to open a charter school in the State; or

(b) In the case of a State in which LEAs are the only authorized public chartering agencies, the State has an appeals process for the denial of an application for a charter school.

Competitive Preference Priority 2—Equitable Financing (up to 2 points).

To be eligible to receive points under this priority, the State entity must demonstrate that it is located in a State that ensures equitable financing, as compared to traditional public schools, for charter schools and students in a prompt manner.

Competitive Preference Priority 3—Best Practices to Improve Struggling Schools and LEAs (up to 2 points).

To be eligible to receive points under this priority, the State entity must demonstrate that it is located in a State that uses best practices from charter schools to help improve struggling schools and LEAs.

Competitive Preference Priority 4—Charter School Facilities (up to 2 points).

To be eligible to receive points under this priority, the State entity must demonstrate that it is located in a State that provides charter schools one or more of the following:

(a) Funding for facilities.

(b) Assistance with facilities acquisition.

(c) Access to public facilities.

(d) The ability to share in bonds or mill levies.

(e) The right of first refusal to purchase public school buildings.

(f) Low- or no-cost leasing privileges.

Competitive Preference Priority 5—Serving At-Risk Students (up to 3 points).

To be eligible to receive points under this priority, the State entity must demonstrate that it supports charter schools that serve at-risk students through activities such as dropout prevention, dropout recovery, or

[2] *https://www.ed.gov/about/ed-initiatives/raise-bar.*

[3] The six strategies of Raise the Bar include: accelerating learning, developing a well-rounded education, eliminating the *educator* shortage, investing in mental health, ensuring every student has a postsecondary pathway, and a pathway to multilingualism.

[4] Although section 4303(g)(2)(F) of the ESEA uses the term ''authorizing public chartering agencies,'' consistent with section 4310(1), the correct term is ''authorized public chartering agencies.''

comprehensive career counseling services.

Invitational Priorities: For FY 2025, and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets an invitational priority a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Collaborations between Charter Schools and Traditional Public Schools or Districts that Benefit Students and Families across Schools.

(a) The Secretary is interested in funding applications that propose to encourage, but not require, eligible applicants for subgrants to propose projects that include a new collaboration, or the continuation of an existing collaboration, with at least one traditional public school or traditional school district that is designed to benefit students or families served by at least one member of the collaboration, is designed to lead to increased and improved educational opportunities for students served by at least one member of the collaboration, and includes implementation of one or more of the following:

(1) Co-developed or shared curricular and instructional resources or academic course offerings.

(2) Professional development opportunities for teachers and other *educators,* which may include professional learning communities, opportunities for teachers to earn additional certifications, such as in a high-need area or national board certification, and partnerships with educator preparation programs to support teaching residencies.

(3) Evidence-based (as defined in section 8101(21) of the ESEA) practices to improve academic performance for underserved students.

(4) Policies and practices to create safe, supportive, and inclusive learning environments, such as systems of positive behavioral intervention and support.

(5) Transparent enrollment and retention practices and processes that include clear and consistent disclosure to families of policies or requirements (*e.g.,* discipline policies, purchasing and wearing specific uniforms and other fees, or family participation), and any services that are or are not provided that could impact a family's ability to enroll or remain enrolled (*e.g.,* transportation services or participation in the National School Lunch Program).

(6) A shared transportation plan and system that reduces transportation costs for members of the collaboration and takes into consideration various transportation options, including public transportation and district-provided or shared transportation options, cost-sharing or free or reduced-cost fare options, and any distance considerations for prioritized bus services.

(7) A shared special education collaborative designed to address a significant barrier or challenge faced by participating charter schools and traditional public schools in improving academic or developmental outcomes and services for students with disabilities (as defined in section 8101 of the ESEA).

(8) A shared English learner collaborative designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in improving academic outcomes for English learners (as defined in section 8101 of the ESEA).

(9) Other collaborations, such as the sharing of innovative and best practices, designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools and designed to improve academic outcomes for all students served by members of the collaboration.

(b) The State entity certifies that it will ask each eligible applicant that proposes a project that includes such a collaboration to—

(1) Provide in its subgrant application a description of the collaboration that—

(i) Describes each member of the collaboration and whether the collaboration would be a new or existing commitment;

(ii) States the purpose and duration of the collaboration;

(iii) Describes the anticipated roles and responsibilities of each member of the collaboration;

(iv) Describes how the collaboration will benefit one or more members of the collaboration, including how it will benefit students or families affiliated with a member and lead to increased or improved educational opportunities for students, and meet specific and measurable, if applicable, goals;

(vi) Describes the resources members of the collaboration will contribute; and

(vii) Contains any other relevant information; and

(2) Within 120 days of receiving a subgrant award or within 120 days of the date the collaboration is scheduled to begin, whichever is later, provide evidence of participation in the collaboration (which may include, but is not required to include, a memorandum of understanding).

Invitational Priority 2-Promoting Pathways to Multilingualism.

The Secretary is interested in funding applications that propose to encourage, but not require, eligible applicants for subgrants to propose projects with multilingual programming that is centered on the needs and assets of the community the schools serve and is designed to provide students, particularly underserved students, with pathways to multilingualism through any of the following-

(a) Dual language programs that offer academic instruction in two languages and are designed to enroll both English learners and native English speakers on an equitable basis and ensure all students become bilingual and biliterate in both languages.

(b) A mission and focus on supporting Native American language education and development, such as through dual language programs or other instructional models and teaching methods that reflect and preserve Native American language, culture, and history.

(c) A mission and focus on meeting the unique educational needs and celebrating the assets of English learners using evidence-based practices to support English language acquisition and promote academic excellence.

(d) Other innovative or evidence-based strategies to promote multilingualism, including approaches to recruit, support, and retain multilingual educators.

Application Requirements: The following application requirements are from section 4303(f) of the ESEA (20 U.S.C. 7221b(f)) and from the 2022 NFP. The Department will not fund an application that does not meet each application requirement.

In addressing the following application requirements, applicants must clearly identify which application requirement they are addressing. An applicant must address application requirements (a)(1)(i), (a)(1)(vii), (a)(1)(ix), (a)(2)(ii), and (a)(2)(iii) in its response to paragraph (a)(1) of the Quality of the Project Design selection criterion; application requirement (a)(8) in its response to paragraph (a)(4) of the Quality of the Project Design selection criterion; application requirements (a)(1)(ii), (a)(1)(xiii), (a)(3)(i), (a)(3)(ii), (a)(3)(iii), (a)(5), and (a)(7) in its response to the Quality of Eligible Subgrant Applicants selection criterion; application requirements (a)(1)(vi), (a)(1)(x), and (a)(9) in its response to paragraph (c)(1) of the State Plan selection criterion; application requirements (a)(1)(iii), (a)(1)(iv),

(a)(1)(viii), and (a)(1)(xi) in its response to paragraph (c)(3) of the State Plan selection criterion; and application requirement (a)(4) in its response to paragraph (d)(1) of the Quality of the Management Plan selection criterion. An applicant must respond to all other application requirements in paragraph (a) that are not listed above in the Project Narrative.

Applications for funding under the CSP State Entity program must contain the following:

(a) Description of Program—A description of the State entity's objectives in running a quality charter school program and how the objectives of the program will be carried out, including—

(1) A description of how the State entity will—

(i) Support the opening of charter schools through the startup of new charter schools and, if applicable, the replication of high-quality charter schools, and the expansion of high-quality charter schools (including the proposed number of new charter schools to be opened, high-quality charter schools to be opened as a result of the replication of a high-quality charter school, or high-quality charter schools to be expanded under the State entity's program);

(ii) Inform eligible charter schools, developers, and authorized public chartering agencies of the availability of funds under the program;

(iii) Work with eligible applicants to ensure that the eligible applicants access all Federal funds that such applicants are eligible to receive, and help the charter schools supported by the applicants and the students attending those charter schools—

(A) Participate in the Federal programs in which the schools and students are eligible to participate;

(B) Receive the commensurate share of Federal funds the schools and students are eligible to receive under such programs; and

(C) Meet the needs of students served under such programs, including students with disabilities and English learners;

(iv) Ensure that authorized public chartering agencies, in collaboration with surrounding LEAs where applicable, establish clear plans and procedures to assist students enrolled in a charter school that closes or loses its charter to attend other high-quality schools;

(v) In the case of a State entity that is not a State educational agency (SEA)—

(A) Work with the SEA and charter schools in the State to maximize charter school participation in Federal and State programs for which charter schools are eligible; and

(B) Work with the SEA to operate the State entity's program under section 4303 of the ESEA, if applicable;

(vi) Ensure that each eligible applicant that receives a subgrant under the State entity's program—

(A) Is using funds provided under this program for one of the activities described in section 4303(b)(1) of the ESEA; and

(B) Is prepared to continue to operate charter schools funded under section 4303 of the ESEA in a manner consistent with the eligible applicant's application for such subgrant once the subgrant funds under this program are no longer available;

(vii) Support—

(A) Charter schools in LEAs with a significant number of schools identified by the State for comprehensive support and improvement under section 1111(c)(4)(D)(i) of the ESEA; and

(B) The use of charter schools to improve struggling schools, or to turn around struggling schools;

(viii) Work with charter schools on—

(A) Recruitment and enrollment practices to promote inclusion of all students, including by eliminating any barriers to enrollment for *educationally disadvantaged students* (who include foster youth and unaccompanied homeless youth); and

(B) Supporting all students once they are enrolled to promote retention, including by reducing the overuse of discipline practices that remove students from the classroom;

(ix) Share best and promising practices between charter schools and other public schools;

(x) Ensure that charter schools receiving funds under the State entity's program meet the educational needs of their students, including children with disabilities and English learners;

(xi) Support efforts to increase charter school quality initiatives, including meeting the quality authorizing elements described in section 4303(f)(2)(E) of the ESEA;

(xii)(A) In the case of a State entity that is not a charter school support organization, a description of how the State entity will provide oversight of authorizing activity, including how the State will help ensure better authorizing, such as by establishing authorizing standards that may include approving, monitoring, and re-approving or revoking the authority of an authorized public chartering agency based on the performance of the charter schools authorized by such agency in the areas of student achievement, student safety, financial and operational management, and compliance with all applicable statutes and regulations; and

(B) In the case of a State entity that is a charter school support organization, a description of how the State entity will work with the State to support the State's system of technical assistance and oversight of the authorizing activity of authorized public chartering agencies, as described in application requirement (a)(1)(xii)(A); and

(xiii) Work with eligible applicants receiving a subgrant under the State entity's program to support the opening of new charter schools or charter school models described in application requirement (a)(1)(i) that are high schools (ESEA section 4303(f));

(2) A description of the extent to which the State entity—

(i) Is able to meet and carry out Competitive Preference Priorities 1 through 5; [5]

(ii) Is working to develop or strengthen a cohesive statewide system to support the opening of new charter schools and, if applicable, the replication of high-quality charter schools, and the expansion of high-quality charter schools; and

(iii) Is working to develop or strengthen a cohesive strategy to encourage collaboration between charter schools and LEAs on the sharing of best practices (ESEA section 4303(f));

(3) A description of how the State entity will award subgrants, on a competitive basis, including—

(i) A detailed description of how the State entity will review applications from eligible applicants, including –

(A) How eligibility will be determined;

(B) How peer reviewers will be recruited and selected, including efforts the applicant will make to recruit peer reviewers from diverse backgrounds and underrepresented groups;

(C) How subgrant applications will be reviewed and evaluated;

(D) How cost analyses and budget reviews will be conducted to ensure that costs are necessary, reasonable, and allocable to the subgrant;

(E) How applicants will be assessed for risk (*i.e.,* fiscal, programmatic, compliance); and

(F) How funding decisions will be made (2022 NFP);

[5] In accordance with 34 CFR 75.105(c)(2)(i), applications are not required to address competitive preference priorities but may receive additional points if they do so. However, to meet this application requirement, the State entity must describe the extent to which it is able to meet and carry out competitive preference priorities 1 through 5. If the State entity is unable to meet and carry out one or more of these competitive preference priorities, the description for that priority should state that the State entity is unable to meet or carry out the priority.

(ii) A description of the application each eligible applicant desiring to receive a subgrant will be required to submit, which application must include the following:

(A) A description of the roles and responsibilities of eligible applicants, partner organizations, and *charter management organizations* (CMOs), including the administrative and contractual roles and responsibilities of such partners (ESEA section 4303(f));

(*1*) For any existing or proposed contract between a charter school and a for-profit management organization (including a nonprofit management organization operated by or on behalf of a for-profit entity), without regard to whether the management organization or its related entities exercises full or substantial administrative control over the charter school or the CSP project, the applicant must provide the following information or equivalent information that the applicant has submitted to the authorized public chartering agency—

(*i*) A copy of the existing contract with the for-profit management organization or a description of the terms of the contract, including the name and contact information of the management organization; the cost (*i.e.,* fixed costs and estimates of any ongoing costs or fees), including the amount of CSP funds proposed to be used toward such cost, and the percentage such cost represents of the school's overall funding; the duration; roles and responsibilities of the management organization; and steps the applicant will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization, makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(*ii*) A description of any business or financial relationship between the charter school developer and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities that will be used by the charter school;

(*iii*) The name and contact information for each member of the governing board of the charter school and a list of the management organization's officers, chief administrator, or other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c);

(*iv*) A description of how the applicant will ensure that members of the governing board of the charter school are not selected, removed, controlled, or employed by the management organization and that the charter school's legal, accounting, and auditing services will be procured independently from the management organization;

(*v*) An explanation of how the applicant will ensure that the management contract is severable, severing the management contract will not cause the proposed charter school to close, the duration of the management contract will not extend beyond the expiration date of the school's charter, and renewal of the management contract will not occur without approval and affirmative action by the governing board of the charter school; and

(*vi*) A description of the steps the applicant will take to ensure that it maintains control over all student records and has a process in place to provide those records to another public school or school district in a timely manner upon the transfer of a student from the charter school to another public school, including due to closure of the charter school, in accordance with section 4308 of the ESEA (2022 NFP).

(B) A description of the quality controls agreed to between the eligible applicant and the authorized public chartering agency involved, such as a contract or performance agreement; how a school's performance in the State's accountability system and impact on student achievement (which may include student academic growth) will be one of the most important factors for renewal or revocation of the school's charter; and how the State entity and the authorized public chartering agency involved will reserve the right to revoke or not renew a school's charter based on financial, structural, or operational factors involving the management of the school (ESEA section 4303(f));

(C) A description of how the autonomy and flexibility granted to a charter school is consistent with the definition of charter school in section 4310 of the ESEA (ESEA section 4303(f));

(D) A description of how the eligible applicant will solicit and consider input from parents and other members of the community on the implementation and operation of each charter school that will receive funds under the State entity's program (ESEA section 4303(f));

(E) A description of the eligible applicant's planned activities and expenditures of subgrant funds to support opening and preparing for the operation of new charter schools, opening and preparing for the operation of replicated high-quality charter schools, or expanding high-quality charter schools, *and* how the eligible applicant will maintain financial sustainability after the end of the subgrant period (ESEA section 4303(f));

(F) A description of how the eligible applicant will support the use of effective parent, family, and community engagement strategies to operate each charter school that will receive funds under the State entity's program (ESEA section 4303(f)); and

(G) A needs analysis and description of the need for the proposed project, including how the proposed project would serve the interests and meet the needs of students and families in the communities the charter school intends to serve. The needs analysis, which may consist of information and documents previously submitted to an authorized public chartering agency to address need, must include, but is not necessarily limited to, the following:

(*1*) Descriptions of the local community support, including information that demonstrates interest in, and need for, the charter school; benefits to the community; and other evidence of demand for the charter school that demonstrates a strong likelihood the charter school will achieve and maintain its enrollment projections. Such information may include information on waiting lists for the proposed charter school or existing charter schools or traditional public schools, data on access to seats in high-quality public schools in the districts from which the charter school expects to draw students, and family interest in specialized instructional approaches proposed to be implemented at the charter school.

(*2*) Information on the proposed charter school's projected student enrollment and evidence to support the projected enrollment based on the needs analysis and other relevant data and factors, such as the methodology and calculations used.

(*3*) An analysis of the proposed charter school's projected student demographics and a description of the demographics of students attending public schools in the local community in which the charter school would be located and the school districts from which the students are, or would be, drawn to attend the charter school; a description of how the applicant plans to establish and maintain a racially and

socio-economically diverse student body, including proposed strategies (that are consistent with applicable legal requirements) to recruit, admit, enroll, and retain a diverse student body. An applicant that is unlikely to establish and maintain a racially and socio-economically diverse student body at the proposed charter school because the charter school would be located in a racially or socio-economically segregated or isolated community, or due to the charter school's specific educational mission, must describe—

(*i*) Why it is unlikely to be able to establish and maintain a racially and socio-economically diverse student body at the proposed charter school;

(*ii*) How the anticipated racial and socio-economic makeup of the student body would promote the purposes of the CSP to provide high-quality educational opportunities to all students, which may include a specialized educational program or mission; and

(*iii*) The anticipated impact of the proposed charter school on the racial and socio-economic diversity of the public schools and school districts from which students would be drawn to attend the charter school.

(*4*) A robust family and community engagement plan designed to ensure the active participation of families and the community that includes the following:

(*i*) How families and the community were, are, or will be engaged in determining the vision and design for the charter school, including specific examples of how families' and the community's input was, is, or is expected to be incorporated into the vision and design for the charter school.

(*ii*) How the charter school will meaningfully engage with both families and the community to create strong and ongoing partnerships.

(*iii*) How the charter school will foster a collaborative culture that involves the families of all students, including underserved students, in ensuring their ongoing input in school decision-making.

(*iv*) How the charter school's recruitment, admissions, enrollment, and retention processes will engage and accommodate families from various backgrounds, including English learners, students with disabilities, and students of color, including by holding enrollment and recruitment events on weekends or during non-standard work hours, making interpreters available, and providing enrollment and recruitment information in widely accessible formats (*e.g.,* hard copy and online in multiple languages; as appropriate, large print or braille for visually impaired individuals) through widely available and transparent means (*e.g.,* online and at community locations).

(*v*) How the charter school has engaged or will engage families and the community to develop an instructional model to best serve the targeted student population and their families, including students with disabilities and English learners.

(*5*) How the plans for the operation of the charter school will support and reflect the needs of students and families in the community, including consideration of district or *community assets* and how the school's location, or anticipated location if a facility has not been secured, will facilitate access for the targeted student population (*e.g.,* access to public transportation or other transportation options, the demographics of neighborhoods within walking distance of the school, and transportation plans and costs for students who are not able to walk or use public transportation to access the school).

(*6*) A description of the steps the applicant has taken or will take to ensure that the proposed charter school (A) would not hamper, delay, or negatively affect any desegregation efforts in the community in which the charter school would be located and the public school districts from which students are, or would be, drawn to attend the charter school, including efforts to comply with a court order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools; and (B) to ensure that the proposed charter school would not otherwise increase racial or socio-economic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school. (2022 NFP).

(iii)(A) A description of how the State entity, in awarding subgrants to eligible applicants, will—

(*1*) Give priority to eligible applicants that propose projects that include the creation, replication, or expansion of a high-quality charter school that is developed and implemented—

(*i*) With meaningful and ongoing engagement with current or former teachers and other *educators;* and

(*ii*) Using a community-centered approach that includes an assessment of community assets, informs the development of the charter school, and includes the implementation of protocols and practices designed to ensure that the charter school will use and interact with community assets on an ongoing basis to create and maintain strong community ties.

(B) In its application, an eligible applicant must provide a high-quality plan that demonstrates how its proposed project would meet the requirements in paragraph (G)(6)(iii)(A)(1) of these application requirements, accompanied by a timeline for key milestones that span the course of planning, development, and implementation of the charter school. (2022 NFP).

(iv) In the case of a State entity that partners with an outside organization to carry out the State entity's quality charter school program, in whole or in part, a description of the roles and responsibilities of the partner (ESEA section 4303(f));

(v) A description of how the State entity will ensure that each charter school receiving funds under the State entity's program has considered and planned for the transportation needs of the school's students (4303(f));

(vi) A description of how the State in which the State entity is located addresses charter schools in the State's open meetings and open records laws (ESEA section 4303(f));

(vii) A description of how the State entity will support diverse charter school models, including models that serve rural communities (ESEA section 4303(f));

(viii) Evidence to support the requested funds and projected enrollment, such as explanations regarding the methodology and calculations (2022 NFP); and

(ix) A description, including a timeline, of how the State entity will monitor and report on subgrant performance in accordance with 2 CFR 200.329, and address and mitigate subgrantee risk, including—

(A) How subgrantees will be selected for in-depth monitoring, including factors that indicate higher risk (*e.g.,* charter schools that have management contracts with for-profit education management organizations, virtual charter schools, and charter schools with a history of poor performance);

(B) How identified subgrantee risk will be addressed;

(C) How subgrantee expenditures will be monitored;

(D) How monitors will be trained;

(E) How monitoring findings will be shared with subgrantees;

(F) How corrective action plans will be used to resolve monitoring findings;

(G) How the State entity will ensure transparency so that monitoring findings and corrective action plans are available to families and the public; and

(H) How the State entity will work with authorized public chartering agencies to share information regarding

the monitoring of subgrantees, including in areas related to fiscal protocols and organizational governance, for the purpose of reducing the reporting burden on charter schools (2022 NFP).

(b) Assurances—Assurances by the State entity that—

(1) Each charter school receiving funds through the State entity's program will have a high degree of autonomy over budget and operations, including autonomy over personnel decisions (ESEA section 4303(f));

(2) The State entity will support charter schools in meeting the educational needs of their students, including children with disabilities and English learners (ESEA section 4303(f));

(3) The State entity will ensure that the authorized public chartering agency of any charter school that receives funds under the State entity's program adequately monitors each charter school under the authority of such agency in recruiting, enrolling, retaining, and meeting the needs of all students, including children with disabilities and English learners (ESEA section 4303(f));

(4) The State entity will provide adequate technical assistance to eligible applicants to meet the objectives described in application requirement (a)(1)(8) (ESEA section 4303(f));

(5) The State entity will promote quality authorizing, consistent with State law, such as through providing technical assistance to support each authorized public chartering agency in the State to improve such agency's ability to monitor the charter schools authorized by the agency, including by—

(i) Assessing annual performance data of the schools, including, as appropriate, graduation rates, student academic growth, and rates of student attrition;

(ii) Reviewing the schools' independent, annual audits of financial statements prepared in accordance with generally accepted accounting principles and ensuring that any such audits are publicly reported; and

(iii) Holding charter schools accountable to the academic, financial, and operational quality controls agreed to between the charter school and the authorized public chartering agency involved, such as renewal, non-renewal, or revocation of the school's charter (ESEA section 4303(f));

(6) The State entity will work to ensure that charter schools are included with the traditional public schools in decision-making about the public school system in the State (ESEA section 4303(f));

(7) The State entity will ensure that each charter school receiving funds under the State entity's program makes publicly available, consistent with the dissemination requirements of the annual State report card under section 1111(h) of the ESEA, including on the website of the school, information to help parents make informed decisions about the education options available to their children, including—

(i) Information on the educational program;

(ii) Student support services;

(iii) Parent contract requirements (as applicable), including any financial obligations or fees;

(iv) Enrollment criteria (as applicable); and

(v) Annual performance and enrollment data for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such disaggregation of performance and enrollment data must not be required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student (ESEA section 4303(f)).

(8) The State Entity will ensure that each charter school receiving CSP funding has not and will not enter into a contract with a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, under which the management organization, or its related entities, exercises full or substantial administrative control over the charter school and, thereby, the CSP project (2022 NFP).

(9) Each charter school receiving CSP funding will provide an assurance that any management contract between the charter school and a for-profit management organization, including a nonprofit CMO operated by or on behalf of a for-profit entity, guarantees or will guarantee that—

(i) The charter school maintains control over all CSP funds, makes all programmatic decisions, and directly administers or supervises the administration of the subgrant;

(ii) The management organization does not exercise full or substantial administrative control over the charter school (and, thereby, the CSP project), except that this does not limit the ability of a charter school to enter into a contract with a management organization for the provision of services that do not constitute full or substantial control of the charter school project funded under the CSP (*e.g.,* food services or payroll services) and that otherwise comply with statutory and regulatory requirements;

(iii) The charter school's governing board has access to financial and other data pertaining to the charter school, the management organization, and any related entities; and

(iv) The charter school is in compliance with applicable Federal and State laws and regulations governing conflicts of interest, and there are no actual or perceived conflicts of interest between the charter school and the management organization (2022 NFP).

(10) Each charter school receiving CSP funding will post on its website, on an annual basis, a copy of any management contract between the charter school and a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, and report information on such contract to the State entity, including—

(i) A copy of the existing contract with the for-profit organization or a detailed description of the terms of the contract, including the name and contact information of the management organization, the cost (*i.e.,* fixed costs and estimates of any ongoing cost), including the amount of CSP funds proposed to be used toward such cost, and the percentage such cost represents of the charter school's total funding, the duration, roles and responsibilities of the management organization, and the steps the charter school is taking to ensure that it makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant or subgrant in accordance with 34 CFR 76.701;

(ii) A description of any business or financial relationship between the charter school developer or CMO and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities to be used by the charter school;

(iii) The names and contact information for each member of the governing boards of the charter school and a list of management organization's officers, chief administrator, and other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c); and

(iv) A description of how the charter school ensured that such contract is severable and that a change in management companies will not cause

the proposed charter school to close (2022 NFP).

(11) Each charter school receiving CSP funding will disclose, as part of the enrollment process, any policies and requirements (*e.g.,* purchasing and wearing specific uniforms and other fees, or requirements for family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled in the school (*e.g.,* transportation services or participation in the National School Lunch Program) (2022 NFP).

(12) Each charter school receiving CSP funding will hold or participate in a public hearing in the local community in which the proposed charter school would be located to obtain information and feedback regarding the potential benefit of the charter school, which must at least include information about how the proposed charter school will increase the availability of high-quality public school options for underserved students, promote racial and socio-economic diversity in such community or have an educational mission to serve primarily underserved students, and not increase racial or socio-economic segregation or isolation in the school districts from which students would be drawn to attend the charter school (consistent with applicable laws). Applicants must ensure that the hearing (and notice thereof) is accessible to individuals with disabilities and limited English proficient individuals as required by law, actively solicit participation in the hearing (*i.e.,* provide widespread and timely notice of the hearing), make good faith efforts to accommodate as many people as possible (*e.g.,* hold the hearing at a convenient time for families or provide virtual participation options), and submit a summary of the comments received as part of the application. The hearing may be conducted as part of the charter authorizing process, provided that it meets the requirements above. (2022 NFP).

(13) No eligible applicant receiving funds under the State entity's program will use implementation funds for a charter school until after the charter school has received a charter from an authorized public chartering agency and has a contract, lease, mortgage, or other documentation indicating that it has a facility in which to operate. Consistent with sections 4303(b)(1), 4303(h)(1)(B), and 4310(6) of the ESEA, an eligible applicant may use CSP planning funds for post-award planning and design of the educational program of a proposed new or replicated high-quality charter school that has not yet opened, which may include hiring and compensating teachers, school leaders, and specialized instructional support personnel; providing training and professional development to staff; and other critical planning activities that need to occur prior to the charter school opening when such costs cannot be met from other sources. (2022 NFP).

Note: The Department recognizes that the charter approval process may exceed the 18-month planning period for CSP grants and subgrants, as prescribed under section 4303(d)(1)(B) of the ESEA. In such a case, applicants may request approval from the State entity to amend their application to request an extension of the 18-month planning period. Under section 4303(d)(5) of the ESEA, the Secretary, in his discretion, may waive any statutory or regulatory requirement over which he exercises administrative authority, except the requirements related to the definition of ''charter school'' in section 4310(2), provided that the waiver is requested in an approved application and the Secretary determines that granting the waiver will promote the purposes of the CSP. It is also worth noting that a subgrantee may request approval from the State entity to amend its approved application and budget to cover additional planning costs that it may incur due to an unexpected delay in the charter approval process.

(14) Within 120 days of the date of any subgrant award notifications, the grantee will post on its website a list of the charter schools slated to receive CSP funds, including the following for each school:

(i) The name, address, and grades served.

(ii) A description of the education model.

(iii) If the charter school has contracted with a for-profit management organization, the name of the management organization, the amount of CSP funding the management organization will receive from the school, and a description of the services to be provided.

(iv) The award amount, including any funding that has been approved for the current year and any additional years of the CSP grant for which the school will receive support.

(v) The grant or subgrant application (redacted as necessary).

(vi) The peer review materials, including reviewer comments and scores (redacted as necessary) from the subgrant competition (2022 NFP).

(c) Waivers—Requests for information about waivers, including—

(1) A request and justification for waivers of any Federal statutory or regulatory provisions that the State entity believes are necessary for the successful operation of the charter schools that will receive funds under the State entity's program under section 4303 of the ESEA or, in the case of a State entity that is a charter school support organization, a description of how the State entity will work with the State to request such necessary waivers, where applicable; and

(2) A description of any State or local rules, generally applicable to public schools, that will be waived or otherwise not apply to such schools.

Definitions: The following definitions are from sections 4303(a), 4310, and 8101 of the ESEA (20 U.S.C. 7221b(a), 7221i, and 7801); 34 CFR 77.1; and the 2022 NFP.

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a *performance target,* whether a performance target is ambitious depends upon the context of the relevant performance measure and the baseline for that measure (34 CFR 77.1).

Authorized public chartering agency means an SEA, LEA, or other public entity that has the authority pursuant to State law and approved by the Secretary to authorize or approve a charter school (section 4310(1) of the ESEA).

Baseline means the starting point from which performance is measured and targets are set (34 CFR 77.1).

Charter management organization means a nonprofit organization that operates or manages a network of charter schools linked by centralized support, operations, and oversight (section 4310(3) of the ESEA).

Charter school means a public school that—

(1) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(2) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution; [6]

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of GEPA (20 U.S.C. 1232g) (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974''), and part B of the Individuals with Disabilities Education Act (IDEA);

(8) Is a school to which parents choose to send their children, and that—

(i) Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA, if more students apply for admission than can be accommodated; or

(ii) In the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in paragraph (i);

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(10) Meets all applicable Federal, State, and local health and safety requirements;

(11) Operates in accordance with State law;

(12) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(13) May serve students in early childhood education programs or postsecondary students (section 4310(2) of the ESEA).

Note: Pursuant to the definition of *authorized public chartering agency* in section 4310(1) of the ESEA, for a school to qualify as a charter school under section 4310(2) and receive Federal CSP funds, the entity that issues the charter or performance contract must be an SEA, LEA, or other *public* entity with authority pursuant to State law to approve a charter school.

Charter school support organization means a nonprofit, nongovernmental entity that is not an authorized public chartering agency and provides, on a statewide basis—

(1) Assistance to developers during the planning, program design, and initial implementation of a charter school; and

(2) Technical assistance to operating charter schools (section 4310(4) of the ESEA).

Child with a disability means—

(1) A child (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to as ''emotional disturbance''), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services.

(2) For a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the LEA, include a child (i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (ii) who, by reason thereof, needs special education and related services (section 8101(4) of the ESEA).

Community assets means resources that can be identified and mobilized to improve conditions in the charter school and community. These assets may include—

(1) Human assets, including capacities, skills, knowledge base, and abilities of individuals within a community; and

(2) Social assets, including networks, organizations, businesses, and institutions that exist among and within groups and communities (2022 NFP).

Developer means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out (section 4310(5) of the ESEA).

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution (2022 NFP).

Early childhood education program means—

(1) A Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 *et seq.*), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding;

(2) A State licensed or regulated child care program; or

(3) A program that (i) serves children from birth through age 6 that addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and (ii) is (A) a State prekindergarten program, (B) a program authorized under section 619 (20 U.S.C. 1419) or part C of the IDEA, or (C) a program operated by an LEA (section 8101(16) of the ESEA).

Educator means an individual who is an early learning educator, teacher, principal or other school or district leader, specialized instructional support personnel (*e.g.,* school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty (2022 NFP).

Educationally disadvantaged student means a student in one or more of the categories described in section 1115(c)(2) of the ESEA, which include children who are economically disadvantaged, children with disabilities, migrant students, English learners, neglected or delinquent students, homeless students, and students who are in foster care (2022 NFP).

Eligible applicant means a developer that has—

(1) Applied to an authorized public chartering authority to operate a charter school; and

(2) Provided adequate and timely notice to that authority (section 4310(6) of the ESEA).

[6] The Department will apply this element of the definition of ''charter school'' consistent with applicable U.S. Supreme Court precedent, including *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S.Ct. 2012 (2017), *Espinoza* v. *Montana Department of Revenue,* 140 S.Ct. 2246 (2020), and *Carson* v. *Makin,* 142 S.Ct. 1987 (2022).

English learner, when used with respect to an individual, means an individual—

(1) Who is aged 3 through 21;

(2) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(3)(i) Who was not born in the United States or whose native language is a language other than English;

(ii)(A) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(B) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(4) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(i) The ability to meet the challenging State academic standards;

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society (section 8101(20) of the ESEA).

Expand, when used with respect to a high-quality charter school, means to significantly increase enrollment or add one or more grades to the high-quality charter school (section 4310(7) of the ESEA).

High-quality charter school means a charter school that—

(1) Shows evidence of strong academic results, which may include strong student academic growth, as determined by a State;

(2) Has no significant issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance;

(3) Has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the charter school; and

(4) Has demonstrated success in increasing student academic achievement, including graduation rates where applicable, for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such demonstration is not required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student (section 4310(8) of the ESEA).

Logic model (also referred to as theory of action) means a framework that identifies key *project components* of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the *relevant outcomes*) and describes the theoretical and operational relationships among the key project components and relevant outcomes (34 CFR 77.1).

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare) (section 8101(38) of the ESEA).

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance (34 CFR 77.1).

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project (34 CFR 77.1).

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual *project component* or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers) (34 CFR 77.1).

Public as applied to an agency, organization, or institution means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal government. (34 CFR 77.1).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program (34 CFR 77.1).

Replicate, when used with respect to a high-quality charter school, means to open a new charter school, or a new campus of a high-quality charter school, based on the educational model of an existing high-quality charter school, under an existing charter or an additional charter, if permitted or required by State law (section 4310(9) of the ESEA).

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas (section 8101(48) of the ESEA).

State educational agency means the agency primarily responsible for the State supervision of public elementary schools and secondary schools (section 8101(49) of the ESEA).

State entity means—

(1) A State educational agency;

(2) A State charter school board;

(3) A Governor of a State; or

(4) A charter school support organization (section 4303(a) of the ESEA).

Underserved student means a student in one or more of the following subgroups:

(1) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(2) A student of color.

(3) A student who is a member of a federally recognized Indian Tribe.

(4) An English learner (as defined in section 8101 of the ESEA).

(5) A child or student with a disability (as defined in section 8101 of the ESEA).

(6) A *disconnected youth.*

(7) A migrant student.

(8) A student experiencing homelessness or housing insecurity.

(9) A student who is in foster care.

(10) A pregnant, parenting, or caregiving student.

(11) A student impacted by the justice system, including a formerly incarcerated student.

(12) A student performing significantly below grade level (2022 NFP).

Program Authority: Title IV, part C of the ESEA (20 U.S.C. 7221–7221j).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 76, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200 (Uniform Guidance), as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The 2022 NFP.

Note: As of October 1, 2024, grant applicants must follow the provisions stated in the updated Uniform Guidance (89 FR 30046, April 22, 2024) when preparing an application. For more information about these regulations please visit: *https://www.cfo.gov/resources-coffa/uniform-guidance/.*

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $400,000,000 for the CSP for FY 2025, of which we would use an estimated $107,000,000 for new awards under this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $2,000,000 to $20,000,000 per year.

Estimated Average Size of Awards: $9,000,000 per year.

Maximum Award: See section III.4(a) of this notice, *Reasonable and Necessary Costs,* for information regarding the maximum amount of funds that State entities may award for each charter school receiving subgrant funds.

Estimated Number of Awards: 4–6.

Note: The Department is not bound by any estimates in this notice. The estimated range and average size of awards are based on a single 12-month budget period. We may use FY 2025 funds to support multiple 12-month budget periods for one or more grantees.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Entities:* State entities in States with a specific State statute authorizing the granting of charters to schools.

Under section 4303(e)(1) of the ESEA, no State entity may receive a grant under this competition for use in a State in which a State entity is currently using a CSP State Entity grant. Thus, if multiple State entities in a State submit applications that receive high enough scores to be recommended for funding under this competition, only the highest scoring application among such State entities will be funded. Likewise, State entities located in States in which a State entity has a current CSP State Entity grant that is not in its final budget period (or is in its final budget period, but the grantee plans to request a one-time no-cost extension in accordance with 34 CFR 75.261 and 2 CFR 200.308(g)(2)[7]) (*i.e.,* Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, West Virginia, and Wisconsin) are ineligible to apply for a CSP State Entity grant under this competition.

State entities located in States in which a State entity has a current CSP State Entity grant that is operating under a no-cost extension (*i.e.,* Alabama, Arkansas, Delaware, New Hampshire, and Washington), or that is not operating under a no-cost extension but is in its final budget period and has notified the Department that it does not intend to request a no-cost extension (*i.e.,* Nevada), however, are eligible to apply for a CSP State Entity grant under this competition. The Department will accept applications from current State entity grantees located in these States as well as from State entities located in these States that do not have current grants.

Consistent with section 4303(e)(1), if a State entity is approved for a new CSP State Entity grant under this competition for use in a State in which a State entity has a current CSP State Entity grant that is operating under a no-cost extension (or that is in its final budget period and does not request a no-cost extension at least 10 calendar days before the end of the performance period specified in the Federal award in accordance with 2 CFR 200.308(g)(2)), the current State entity grantee must (a) obligate all grant funds; (b) complete all grant and subgrant activities; and (c) begin the grant closeout process (*i.e.,* liquidating the grant and not incurring new costs) prior to the expiration date of the no-cost extension (or the end of the performance period for a grantee that is in its final budget period and did not request a no-cost extension). In its application, a State entity that is applying for a new award and that has a current CSP State Entity grant under which the State entity has not yet completed all grant activities may request a waiver under section 4303(d)(5) of the ESEA to enable it to request a no-cost extension under its current CSP State Entity grant (*i.e.,* to complete grant activities) and to apply for a new CSP State Entity grant award. Additionally, if a current State entity grantee is eligible to apply for a new CSP State Entity grant but chooses not to do so, even though it has current subgrantees that will be unable to complete their subgrant activities before the current State Entity grant expires, another State entity applicant located in that State may request a waiver under section 4303(d)(5) of the ESEA to enable it to award a second subgrant within a five-year period to eligible applicants that previously received a subgrant from the current State entity grantee but were unable to complete their subgrant activities before the current State Entity grant expired, without requiring the eligible applicant to demonstrate three years of improved educational results as required under section 4303(e)(2) of the ESEA.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *https://www.ed.gov/about/ed-offices/ofo#Indirect-Cost-Division.*

c. *Administrative Cost Limitation:* A State entity receiving a grant under this section must not reserve more than 3 percent of funds for administrative costs, which may include technical assistance (ESEA section 4303(c)(1)(C)).

3. *Subgrantees:* (a) Under section 4303(b) and (c)(2) of the ESEA, a State entity may award subgrants to eligible applicants and technical assistance providers.

(b) Under section 4303(d)(2) of the ESEA, when awarding subgrants to eligible applicants, a State entity must use a peer review process to review applications.

Note: An eligible applicant (*i.e.,* charter school developer or charter school) in a State in which no State entity has an approved grant application under section 4303 of the ESEA may apply for funding directly from the Department under the CSP Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer) (ALN numbers 84.282B and 84.282E) program. Additional information about the CSP Developer program is available at *https://www.ed.gov/grants-and-programs/grants-birth-grade-12/charter-school-programs/charter-schools-program-csp-grants-to-charter-school-developers-for-the-opening-of-new-charter-schools-and-for-the-replication-and-expansion-of-high-quality-charter-schools.*

4. *Other:* (a) *Reasonable and Necessary Costs:* The Secretary may elect to impose maximum limits on the amount of subgrant funds that a State entity may award to an eligible applicant per new charter school created or replicated, per charter school

[7] Under 34 CFR 75.261, a grantee may extend the project period of an award one time for up to 12 months without the prior approval of the Department if the grantee meets the requirements for extension in 2 CFR 200.308(g)(2), and Department statutes, regulations, and the terms of the award do not prohibit the extension.

expanded, or per new school seat created.

For this competition, the maximum amount of subgrant funds a State entity may award to a subgrantee per new charter school, replicated high-quality charter school, or expanded high-quality charter school over a 5-year subgrant period is $2,000,000.

Note: Applicants must ensure that all costs included in the proposed budget are necessary and reasonable to meet the goals and objectives of the proposed project. Any costs determined by the Secretary to be unreasonable or unnecessary will be removed from the final approved budget.

(b) *Audits:* (i) A non-Federal entity that expends $1,000,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR part 200. (2 CFR 200.501(a))

(ii) A non-Federal entity that expends less than $1,000,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office. (2 CFR 200.501(d)).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 23, 2024 (89 FR 104528) and available at *https://www.federalregister.gov/documents/2024/12/23/2024-30488/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs*, which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the CSP State Entity grant competition, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600 (Predisclosure Notification Procedures for Confidential Commercial Information), please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information, please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* In accordance with section 4303(c) of the ESEA, a State entity receiving a grant under this program must: (a) use not less than 90 percent of the grant funds to award subgrants to eligible applicants, in accordance with the quality charter school program described in the State entity's application pursuant to section 4303(f), for activities related to opening and preparing for the operation of new charter schools and replicated high-quality charter schools, or expanding high-quality charter schools; (b) reserve not less than 7 percent of the grant funds to provide technical assistance to eligible applicants and authorized public chartering agencies in carrying out such activities, and to work with authorized public chartering agencies in the State to improve authorizing quality, including developing capacity for, and conducting, fiscal oversight and auditing of charter schools; and (c) reserve not more than 3 percent of the grant funds for administrative costs, which may include technical assistance. The State entity's application should include a description of the State entity's objectives in providing technical assistance to eligible applicants and authorized public chartering agencies under section 4303(b)(2) of the ESEA, and the activities identified to provide such technical assistance, including any activities related to serving students with disabilities and English learners. A State entity may use a grant received under this program to provide technical assistance and to work with authorized public chartering agencies to improve authorizing quality under section 4303(b)(2) of the ESEA directly or through grants, contracts, or cooperative agreements.

Limitation on Grants and Subgrants: Under section 4303(d) of the ESEA, a grant awarded by the Secretary to a State entity under this competition must be for a period of not more than 5 years.

A subgrant awarded by a State entity under this program must be for a period of not more than 5 years, of which an eligible applicant may use not more than 18 months for planning and program design. An eligible applicant may not receive more than one subgrant under this program for each individual charter school for a 5-year period, unless the eligible applicant demonstrates to the State entity that such individual charter school has at least 3 years of improved educational results for students enrolled in such charter school, with respect to the elements described in section 4310(8)(A) and (D) of the ESEA.[8]

Other CSP Grants: A charter school that previously received funds for opening or preparing to operate a new charter school, or replicating or expanding a high-quality charter school, under the CSP State Entity program (ALN number 84.282A), the CSP Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO) program (ALN number 84.282M), or the CSP Developer program (ALN numbers 84.282B and 84.282E), may not use funds under this program to carry out the same or substantially similar activities. However, such charter school may be eligible to receive funds under this competition to expand the charter school beyond the existing grade levels or student count.

Likewise, a charter school that previously was awarded a subgrant by a State entity under this program (or the former CSP Grants for State Educational Agencies program) is ineligible to receive funds to carry out the same activities under the CMO program (ALN number 84.282M) or Developer program (ALN numbers 84.282B and 84.282E), including for opening or preparing to operate a new charter school, or for replication or expansion.

Uses of Subgrant Funds: Under section 4303(b) of the ESEA, State entities awarded grants under this competition must award subgrants to

[8] Section 4303(e)(2) of the ESEA prescribes the circumstances under which an eligible applicant may be eligible to apply to a State entity for a second subgrant for an individual charter school for a 5-year period. The eligible applicant still would have to meet all program requirements, including the requirements for replicating or expanding a high-quality charter school.

eligible applicants to enable such eligible applicants to—

(a) Open and prepare for the operation of new charter schools;

(b) Open and prepare for the operation of replicated high-quality charter schools; or

(c) Expand high-quality charter schools.

Under section 4303(h) of the ESEA, an eligible applicant receiving a subgrant under this program must use such funds to support activities related to opening and preparing for the operation of new charter schools or replicating or expanding high-quality charter schools, which must include one or more of the following:

(a) Preparing teachers, school leaders, and specialized instructional support personnel, including through paying costs associated with—

(i) Providing professional development; and

(ii) Hiring and compensating, during the eligible applicant's planning period specified in the application for subgrant funds, one or more of the following:

(A) Teachers.

(B) School leaders.

(C) Specialized instructional support personnel.

(b) Acquiring supplies, training, equipment (including technology), and educational materials (including developing and acquiring instructional materials).

(c) Carrying out necessary renovations to ensure that a new school building complies with applicable statutes and regulations, and minor facilities repairs (excluding construction).

(d) Providing one-time, startup costs associated with providing transportation to students to and from the charter school.

(e) Carrying out community engagement activities, which may include paying the cost of student and staff recruitment.

(f) Providing for other appropriate, non-sustained costs related to opening, replicating, or expanding high-quality charter schools when such costs cannot be met from other sources.

Diversity of Projects: Per section 4303(d)(4) of the ESEA, each State entity awarding subgrants under this competition must award subgrants in a manner that, to the extent practicable and applicable, ensures that such subgrants—

(a) Are distributed throughout different areas, including urban, suburban, and rural areas; and

(b) Will assist charter schools representing a variety of educational approaches.

Award Basis: In determining whether to approve a grant award and the amount of such award, the Department will consider, among other things, the applicant's performance and use of funds under a previous or existing award under any Department program (34 CFR 75.217(d)(3)(ii)) and any other financial resources available to the applicant (34 CFR 75.233(b)). In assessing the applicant's performance and use of funds under a previous or existing award, the Secretary will consider, among other things, the outcomes the applicant has achieved and the results of any Departmental grant monitoring, including the applicant's progress in remedying any deficiencies identified in such monitoring.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit and English Language Requirement:* The application narrative (Part III of the application) is where you, the applicant, address the priorities, selection criteria, and application requirements that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 60 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Applications must be in English, and peer reviewers will only consider supporting documents submitted with the application that are in English.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Pre-Application Webinar Information:* The Department will hold a pre-application meeting via webinar designed to provide technical assistance to interested applicants. Detailed information regarding this webinar will be provided at *https://www.ed.gov/grants-and-programs/grants-birth-grade-12/charter-school-programs/expanding-opportunities-through-quality-charter-schools-program-csp-grants-to-state-entities,* on the *FY 2025 SE Grant Competition* tab. There is no registration fee for attending this meeting.

For further information about the pre-application meeting, contact Sareeta Schmitt, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–5970. Telephone: (202) 205–0730. Email: *SE_Competition@ed.gov.*

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from section 4303(g)(1) of the ESEA (20 U.S.C. 7221b(g)(1)), the 2022 NFP, and 34 CFR 75.210. The maximum possible total score an application can receive for addressing the criteria is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses following the criterion.

(a) *Quality of the Project Design (up to 35 points).* The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers:

(1) The quality of the logic model or other conceptual framework underlying the proposed project, including how inputs are related to outcomes. (34 CFR 75.210) (up to 5 points);

(2) The extent to which the methods of evaluation or other evidence-building include the use of objective *performance measures* that are clearly related to the intended outcomes of the project and will produce quality data that are quantitative and qualitative. (34 CFR 75.210) (up to 5 points);

(3) The *ambitious*ness of the State entity's objectives for the quality charter school program carried out under the CSP State Entity program (section 4303(g)(1)(B) of the ESEA (20 U.S.C. 7221b(g)(1)(B)) (up to 5 points);

(4) The extent to which the projected number of subgrant awards for each grant project year is supported by evidence of demand and need, and the extent to which the proposed average subgrant award amount is supported by evidence of the need of applicants (2022 NFP) (up to 20 points).

(b) *Quality of Eligible Applicants Receiving Subgrants (up to 15 points):* The likelihood that the eligible applicants receiving subgrants under the program will meet the State entity's objectives for the quality charter school program and improve educational results for students (section 4303(g)(1)(C) (20 U.S.C. 7221b(g)(1)(C))).

(c) *State Plan (up to 35 points):* The State entity's plan to—

(1) Adequately monitor the eligible applicants receiving subgrants under the State entity's program (section 4303(g)(1)(D)(i) (20 U.S.C. 7221b(g)(1)(D)(i))) (up to 10 points);

(2) Work with the authorized public chartering agencies involved to avoid duplication of work for the charter schools and authorized public chartering agencies (section 4303(g)(1)(D)(ii) (20 U.S.C. 7221b(g)(1)(D)(ii))) (up to 5 points);

(3) Provide technical assistance and support for—

(i) The eligible applicants receiving subgrants under the State entity's program; and

(ii) Quality authorizing efforts in the State (section 4303(g)(1)(D)(iii) of ESEA (20 U.S.C. 7221b(g)(1)(D)(iii))) (up to 10 points);

(4) The State entity's plan to solicit and consider input from parents and other members of the community on the implementation and operation of charter schools in the State (section 4303(g)(1)(E) of ESEA (20 U.S.C. 7221b(g)(1)(E))) (up to 5 points); and

(5) The degree of flexibility afforded by the State's charter school law and how the State entity will work to maximize the flexibility provided to charter schools under such law (section 4303(g)(1)(A) of ESEA (20 U.S.C. 7221b(g)(1)(A))) (up to 5 points).

(d) *Quality of the Management Plan (up to 15 points).* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers:

(1) The feasibility of the management plan to achieve project objectives and goals on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (34 CFR 75.210) (up to 10 points);

(2) The adequacy of plans for ensuring the use of quantitative and qualitative data, including meaningful community member and partner input, to inform continuous improvement in the operation of the proposed project (34 CFR 75.210) (up to 3 points); and

(3) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (34 CFR 75.210) (up to 2 points).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, completion of grant activities, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements, please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. See the standards in 2 CFR 170.105 to determine whether you are covered by 2 CFR part 170.

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must

submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118, including a description of the State entity's objectives in providing technical assistance to eligible applicants and authorized public chartering agencies under section 4303(b)(2) of the ESEA, and the activities identified to provide such technical assistance, including any activities related to serving students with disabilities and English learners; and the impact of the State entity's actions or, if no known impact, an explanation of why. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) In accordance with section 4303(i) of the ESEA, each State entity receiving a grant under this section must submit to the Secretary, at the end of the third year of the 5-year grant period (or at the end of the second year if the grant period is less than 5 years), and at the end of such grant period, a report that includes the following:

(1) The number of students served by each subgrant awarded under this section and, if applicable, the number of new students served during each year of the period of the subgrant.

(2) A description of how the State entity met the objectives of the quality charter school program described in the State entity's application, including—

(A) How the State entity met the objective of sharing best and promising practices as outlined in section 4303(f)(1)(A)(ix) of the ESEA in areas such as instruction, professional development, curricula development, and operations between charter schools and other public schools; and

(B) If known, the extent to which such practices were adopted and implemented by such other public schools.

(3) The number and amount of subgrants awarded under this program to carry out activities described in section 4303(b)(1)(A) through (C) of the ESEA.

(4) A description of—

(A) How the State entity complied with, and ensured that eligible applicants complied with, the assurances included in the State entity's application; and

(B) How the State entity worked with authorized public chartering agencies, and how the agencies worked with the management company or leadership of the schools that received subgrant funds under this program, if applicable.

(d) Under 34 CFR 75.254, the Secretary may provide a grantee with additional funding for data collection, analysis, and reporting. In this case, the Secretary establishes a data collection period.

5. *Performance Measures:* The Department has developed the following performance measures for the purposes of the Department reporting under 34 CFR 75.110:

(a) *Program Performance Measures.* (1) The performance indicators for this program are: (i) The number of charter schools in operation around the Nation, and (ii) the percentage of fourth- and eighth-grade charter school students who are achieving at or above the proficient level on State assessments in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: the Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

(2) In accordance with 34.CFR 75.110(b), applications must describe:

(i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data.

(ii) The applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific performance measures and performance targets consistent with the objectives of the proposed project. In accordance with 34 CFR 75.110(c), applications must include the following:

(1) *Project-specific performance measures.* How each proposed project-specific performance measure would: accurately measure the performance of the project; be consistent with the program performance measures established under paragraph (a) of this section; and be used to inform continuous improvement of the project.

(2) *Baseline data.* (i) Why each proposed *baseline* is valid and reliable, including an assessment of the quality data used to establish the baseline; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) *Performance targets.* Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

All grantees must submit an annual performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

7. *Project Directors' Meeting:* Applicants approved for funding under this competition must attend a meeting for project directors at a location to be determined in the continental United States during each year of the project. Applicants may include, if applicable, the cost of attending these meetings in their proposed budgets as allowable administrative costs.

8. *Technical Assistance:* Applicants approved for funding under this competition will be required to participate in all general and certain specified technical assistance offerings, to include but not limited to, project directors' meetings and other on-site gatherings sponsored by the Department and its contracted technical assistance providers and partners throughout the life of the grant.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3

file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at: *www.govinfo.gov.* At this site, you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Principal Deputy Assistant Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2025–01380 Filed 1–16–25; 11:15 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO Grants)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2025 for CSP CMO Grants.

DATES:

Applications Available: January 21, 2025.

Notice of Intent to Apply: Applicants are strongly encouraged but not required to submit a notice of intent to apply by April 1, 2025. Applicants that do not meet this deadline may still apply.

Deadline for Transmittal of Applications: April 21, 2025.

Deadline for Intergovernmental Review: June 20, 2025.

Pre-Application Webinar Information: The Department will hold a pre-application meeting via webinar to provide technical assistance to prospective applicants. Detailed information regarding this webinar will be provided at *https://www.ed.gov/grants-and-programs/grants-birth-grade-12/charter-school-programs/charter-schools-program-grants-to-charter-management-organizations-for-the-replication-and-expansion-of-high-quality-charter-schools-cmo-grants* on the *FY 2025 CSP CMO Grant Competition* tab.

Note: For new potential grantees unfamiliar with grantmaking at the Department, please consult our ''Getting Started with Discretionary Grant Applications'' web page at *https://www.ed.gov/grants-and-programs/apply-grant/getting-started-discretionary-grant-applications.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 23, 2024 (89 FR 104528), and available at *https://www.federalregister.gov/documents/2024/12/23/2024-30488/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

FOR FURTHER INFORMATION CONTACT: Stephanie S. Jones, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–5970. Telephone: (202) 453–7835. Email: *CMOCompetition@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The CSP CMO Grant program (ALN 84.282M) is authorized under Title IV, Part C of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA) (20 U.S.C. 7221–7221j). Through CSP CMO Grants, the Department awards grants to *charter management organizations (CMOs)* [1] on a competitive basis to enable them to *replicate* or *expand* one or more *high-quality charter schools.* Grant funds may be used to significantly increase the enrollment of, or add one or more grades to, an existing high-quality charter school or to open one or more new *charter schools* or new campuses of a high-quality charter school based on the educational model of an existing high-quality charter school. Charter schools that receive financial assistance through CSP CMO Grants provide elementary or secondary education programs, or both, and may also serve students in *early childhood education programs* or postsecondary students, consistent with the terms of their charter.

Assistance Listing Number: 84.282M.

OMB Control Number: 1810–0767.

Background: The major purposes of the CSP are to expand opportunities for all students, particularly for *children with disabilities, English learners,* and other traditionally *underserved students,* to attend charter schools and meet challenging State academic standards; provide financial assistance for the planning, program design, and initial implementation of charter schools; increase the number of high-quality charter schools available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other *public* schools; aid States in providing facilities support to charter schools; support efforts to strengthen the charter school authorizing process; and support quality, accountability, and transparency in the operational performance of all *authorized public chartering agencies,* including State educational agencies (SEAs) and local educational agencies (LEAs) (see section 4301 of the ESEA).

''Raise the Bar: Lead the World'' (RTB) is the Department's call to action to all stakeholders to transform pre-kindergarten through postsecondary education and unite around *evidence-based* strategies that advance educational equity and excellence for all students.[2] Raising the bar in education will support our Nation's students in building the skills needed to thrive inside and outside of school. As part of the RTB initiative, the Department is focusing on six strategies aimed at promoting academic excellence and wellness for every learner and better preparing our Nation for global competitiveness.[3] This competition advances several RTB strategies, most notably those intended to deliver a comprehensive and rigorous education for every student and provide every

[1] Terms defined in this notice are italicized the first time each term is used.

[2] *https://www.ed.gov/about/ed-initiatives/raise-bar.*

[3] The six strategies of Raise the Bar include: accelerating learning, developing a well-rounded education, eliminating the educator shortage, investing in mental health, ensuring every student has a postsecondary pathway, and promoting a pathway to multilingualism.

student with a pathway to multilingualism.

On July 6, 2022, the Department published in the **Federal Register** a notice of final priorities, requirements, definitions, and selection criteria for this program (87 FR 40406) (2022 NFP), which supplements the program statute and notice of final priorities, requirements, definitions, and selection criteria for CSP CMO Grants published in the **Federal Register** in November 2018 (83 FR 61532) (2018 NFP). The 2018 NFP and 2022 NFP are intended to help ensure the creation, replication, and expansion of high-quality charter schools.

This notice includes two competitive preference priorities—one from the CSP statute and one from the 2022 NFP—and two invitational priorities. The priorities, application requirements, assurances, selection criteria, and definitions in this notice are designed to increase access to high-quality, diverse, and equitable learning opportunities, which is consistent with the RTB initiative and the Department's goals for all public schools. To that end, the first competitive preference priority is a statutory priority from section 4305(b)(5)(A) of the ESEA that promotes racially and socioeconomically diverse student bodies. The second competitive preference priority is from the 2022 NFP and promotes high-quality educator- and community-centered charter schools to support underserved students, including through meaningful and ongoing engagement with current or former teachers and other educators.

The first invitational priority is designed to encourage collaboration between charter schools and traditional public schools or traditional school districts that benefit students and families across schools. These types of collaborations can support improved outcomes for students in both charter schools and traditional public schools, including by sharing instructional materials, creating joint professional learning opportunities, and developing principal pipeline programs. The second invitational priority for this competition, which complements the first competitive preference priority, encourages high-quality charter schools to create pathways to multilingualism for students, particularly underserved students. High-quality multilingual programming provides English learners and native English speakers with the opportunity to become bilingual and biliterate and may support Native American language education and preservation. It also celebrates the assets of English learners while supporting English language acquisition and promoting academic excellence.[4] Using invitational priorities allows the Department to encourage beneficial collaborations and pathways to multilingualism that can better prepare all students for a global society and economy without giving applications that meet either of these priorities preference over other applications.

Priorities: This notice includes two competitive preference priorities and two invitational priorities. In accordance with 34 CFR 75.105(b)(2)(iv), Competitive Preference Priority 1 is from section 4305(b)(5)(A) of the ESEA. Competitive Preference Priority 2 is from the 2022 NFP.

Competitive Preference Priorities: For FY 2025 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities.

Under 34 CFR 75.105(c)(2)(i), we award up to an additional 7 points to an application that meets Competitive Preference Priority 1 and up to an additional 7 points to an application that meets Competitive Preference Priority 2, depending on how well the application meets one or both of these priorities.

An applicant must identify on the abstract form and in the project narrative section of its application the priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points. The Department will not review or award points for any competitive preference priority for an application that fails to clearly identify the competitive preference priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points. An application may receive a maximum of 14 additional points under the competitive preference priorities.

These priorities are:

Competitive Preference Priority 1—Racially and Socioeconomically Diverse Student Bodies (up to 7 points).

Under this priority, applicants must propose to operate or manage high-quality charter schools with racially and socioeconomically diverse student bodies. (Section 4305(b)(5)(A) of the ESEA)

Competitive Preference Priority 2—Promoting High-Quality Educator- and Community-Centered Charter Schools to Support Underserved Students (up to 7 points).

(a) Under this priority, an applicant must propose to open a new charter school, or to replicate or expand a high-quality charter school, that is developed and implemented—

(1) With meaningful and ongoing engagement with current or former teachers and other *educators;* and

(2) Using a community-centered approach that includes an assessment of *community assets,* informs the development of the charter school, and includes the implementation of protocols and practices designed to ensure that the charter school will use and interact with community assets on an ongoing basis to create and maintain strong community ties.

(b) In its application, an applicant must provide a high-quality plan that demonstrates how its proposed project would meet the requirements in paragraph (a) of this priority, accompanied by a timeline for key milestones that span the course of planning, development, and implementation of the charter school. (2022 NFP)

Invitational Priorities: For FY 2025, and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets an invitational priority a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Collaborations Between Charter Schools and Traditional Public Schools or Districts That Benefit Students and Families Across Schools.

(a) The Secretary is particularly interested in funding applications that propose a new collaboration, or the continuation of an existing collaboration, with at least one traditional public school or traditional school district that is designed to benefit students or families served by at least one member of the collaboration, that is designed to lead to increased or improved educational opportunities for students served by at least one member of the collaboration, and that includes implementation of one or more of the following—

(1) Co-developed or shared curricular and instructional resources or academic course offerings.

(2) Professional development opportunities for teachers and other educators, which may include professional learning communities, opportunities for teachers to earn

[4] Kotok, Stephen, and David DeMatthews. ''Challenging School Segregation in the Twenty-First Century: How Districts Can Leverage Dual Language Education to Increase School and Classroom Diversity.'' Clearing House: A Journal of Educational Strategies, Issues and Ideas 91.1 (2018): 1–6.

additional certifications, such as in a high-need area or national board certification, and partnerships with educator preparation programs to support teaching residencies.

(3) Evidence-based practices to improve academic performance for underserved students.

(4) Policies and practices to create safe, supportive, and inclusive learning environments, such as systems of positive behavioral intervention and support.

(5) Transparent enrollment and retention practices and processes that include clear and consistent disclosure to families of policies or requirements (*e.g.,* discipline policies, purchasing and wearing specific uniforms and other fees, or family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled in the school (*e.g.,* transportation services or participation in the National School Lunch Program).

(6) A shared transportation plan and system that reduces transportation costs for at least one member of the collaboration and takes into consideration various transportation options, including public transportation and district-provided or shared transportation options, cost-sharing or free or reduced-cost fare options, and any distance considerations for prioritized bus services.

(7) A shared special education collaborative designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in improving academic and developmental outcomes and services for children with disabilities.

(8) A shared English learner collaborative designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in providing educational programs to improve academic outcomes for English learners.

(9) Other collaborations, such as the sharing of innovative and best practices, designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in providing educational programs to improve academic outcomes for all students served by members of the collaboration.

(b) In its application, an applicant must provide a description of the collaboration that—

(1) Describes each member of the collaboration and whether the collaboration would be a new or existing commitment;

(2) States the purpose and duration of the collaboration;

(3) Describes the anticipated roles and responsibilities of each member of the collaboration;

(4) Describes how the collaboration will benefit one or more members of the collaboration, including how it will benefit students or families affiliated with a member and lead to increased educational opportunities for students, and meet specific and measurable, if applicable, goals;

(5) Describes the resources members of the collaboration will contribute; and

(6) Contains any other relevant information.

(c) Within 120 days of receiving a grant award or within 120 days of the date the collaboration is scheduled to begin, whichever is later, the grantee provides evidence of participation in the collaboration (which may include, but is not required to include, a memorandum of understanding).

Invitational Priority 2—Promoting Pathways to Multilingualism.

The Secretary is particularly interested in funding applications that propose to replicate or expand high-quality charter schools with multilingual programming that is centered on the needs and assets of the community the schools serve and is designed to provide students, particularly underserved students, with pathways to multilingualism through any of the following—

(a) Dual language programs that offer academic instruction in two languages and are designed to enroll both English learners and native English speakers on an equitable basis and ensure all students become bilingual and biliterate in both languages.

(b) A mission and focus on supporting Native American language education and development, such as through dual language programs or other instructional models and teaching methods that reflect and preserve Native American language, culture, and history.

(c) A mission and focus on meeting the unique educational needs and celebrating the assets of English learners using evidence-based practices to support English language acquisition and promote academic excellence.

(d) Other innovative or evidence-based strategies to promote multilingualism, including approaches to recruit, support, and retain multilingual educators.

Definitions: The following definitions are from sections 4310 (20 U.S.C. 7221i) and 8101 (20 U.S.C. 7801) of the ESEA, 34 CFR 77.1, the 2018 NFP, and the 2022 NFP.

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the relevant performance measure and the *baseline* for that measure. (34 CFR 77.1)

Authorized public chartering agency means a State educational agency, local educational agency, or other public entity that has the authority pursuant to State law and approved by the Secretary to authorize or approve a charter school. (Section 4310(1) of the ESEA)

Baseline means the starting point from which performance is measured and targets are set. (34 CFR 77.1)

Charter management organization means a nonprofit organization that operates or manages a network of charter schools linked by centralized support, operations, and oversight. (Section 4310(3) of the ESEA)

Charter school means a public school that—

(1) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(2) Is created by a *developer* as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution; [5]

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of

[5] The Department will apply this element of the definition of ''charter school'' consistent with applicable U.S. Supreme Court precedent, including *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 582 U.S. 449 (2017), *Espinoza* v. *Montana Department of Revenue,* 140 S. Ct. 2246 (2020), and *Carson* v. *Makin,* 142 S. Ct. 1987 (2022).

1973, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of GEPA (20 U.S.C. 1232g) (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974''), and part B of the Individuals with Disabilities Education Act (IDEA);

(8) Is a school to which *parents* choose to send their children, and that—

(i) Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA, if more students apply for admission than can be accommodated; or

(ii) In the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in clause (i);

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(10) Meets all applicable Federal, State, and local health and safety requirements;

(11) Operates in accordance with State law;

(12) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(13) May serve students in early childhood education programs or postsecondary students. (Section 4310(2) of the ESEA)

Note: Pursuant to the definition of *authorized public chartering agency* in section 4310(1) of the ESEA, for a school to qualify as a charter school under section 4310(2) and receive Federal CSP funds, the entity that issues the charter or performance contract must be an SEA, LEA, or other public entity with authority pursuant to State law to approve a charter school.

Child with a disability means—

(1) A child (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to as ''emotional disturbance''), orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities; and (ii) who, by reason thereof, needs special education and related services.

(2) For a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the LEA, include a child (i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and (ii) who, by reason thereof, needs special education and related services. (Section 8101(4) of the ESEA)

Community assets means resources that can be identified and mobilized to improve conditions in the charter school and local community. These assets may include—

(1) Human assets, including capacities, skills, knowledge base, and abilities of individuals within a community; and

(2) Social assets, including networks, organizations, businesses, and institutions that exist among and within groups and communities. (2022 NFP)

Developer means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out. (Section 4310(5) of the ESEA)

Disconnected youth means an individual, between the ages of 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution. (2022 NFP)

Early childhood education program means—

(1) A Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 *et seq.*), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding;

(2) A State licensed or regulated child care program; or

(3) A program that—

(i) Serves children from birth through age 6 that addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and

(ii) Is (A) a State prekindergarten program; (B) a program authorized under section 619 (20 U.S.C. 1419) or part C of the IDEA; or (C) a program operated by an LEA. (ESEA section 8101(16))

Educationally disadvantaged student means a student in one or more of the categories described in section 1115(c)(2) of the ESEA, which include children who are economically disadvantaged, students who are children with disabilities, migrant students, English learners, neglected or delinquent students, homeless students, and students who are in foster care. (2018 NFP)

Educator means an individual who is an early learning educator, teacher, principal or other school or district leader, specialized instructional support personnel (*e.g.,* school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty. (2022 NFP)

English learner, when used with respect to an individual, means an individual—

(1) Who is aged 3 through 21;

(2) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(3)(i) Who was not born in the United States or whose native language is a language other than English;

(ii)(A) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(B) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(4) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(i) The ability to meet the challenging State academic standards;

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society. (Section 8101(20) of the ESEA)

Evidence-based, when used with respect to a State, local educational

agency, or school activity, means an activity, strategy, or intervention that—

(1) Demonstrates a statistically significant effect on improving student outcomes or other *relevant outcomes* based on—

(i) Strong evidence from at least one well-designed and well-implemented experimental study;

(ii) Moderate evidence from at least one well-designed and well-implemented quasi-experimental study; or

(iii) Promising evidence from at least one well-designed and well-implemented correlational study with statistical controls for selection bias; or

(2)(i) Demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and

(ii) Includes ongoing efforts to examine the effects of such activity, strategy, or intervention. (Section 8101(21) of the ESEA)

Expand, when used with respect to a high-quality charter school, means to significantly increase enrollment or add one or more grades to the high-quality charter school. (Section 4310(7) of the ESEA)

High-quality charter school means a charter school that—

(1) Shows evidence of strong academic results, which may include strong student academic growth, as determined by a State;

(2) Has no significant issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance;

(3) Has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the charter school; and

(4) Has demonstrated success in increasing student academic achievement, including graduation rates where applicable, for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such demonstration is not required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student. (Section 4310(8) of the ESEA)

Logic model (also referred to as theory of action) means a framework that identifies key *project components* of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the *relevant outcomes*) and describes the theoretical and operational relationships among the key project components and relevant outcomes. (34 CFR 77.1)

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare). (Section 8101(38) of the ESEA)

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance. (34 CFR 77.1)

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project. (34 CFR 77.1)

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers). (34 CFR 77.1)

Public as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal government. (34 CFR 77.1)

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program. (34 CFR 77.1)

Replicate, when used with respect to a high-quality charter school, means to open a new charter school, or a new campus of a high-quality charter school, based on the educational model of an existing high-quality charter school, under an existing charter or an additional charter, if permitted or required by State law. (Section 4310(9) of the ESEA)

Underserved student means a student in one or more of the following subgroups:

(1) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(2) A student of color.

(3) A student who is a member of a federally recognized Indian Tribe.

(4) An English learner.

(5) A child or student with a disability.

(6) A *disconnected youth.*

(7) A migrant student.

(8) A student experiencing homelessness or housing insecurity.

(9) A student who is in foster care.

(10) A pregnant, parenting, or caregiving student.

(11) A student impacted by the justice system, including a formerly incarcerated student.

(12) A student performing significantly below grade level. (2022 NFP)

Application Requirements: Applications for CSP CMO Grant funds must address the following application requirements. These requirements are from sections 4303(f)(1)[6] and 4305(b)(3) of the ESEA, the 2018 NFP, and the 2022 NFP. The Department will not fund an application that does not meet each application requirement. The source of each requirement is provided in parentheses following each requirement.

In addressing the application requirements, applicants must clearly identify which application requirement they are addressing. An applicant must respond to application requirement (a) in a stand-alone section of the application or in an appendix. For all other application requirements, an applicant may choose to respond to each requirement separately or in the context of the applicant's responses to the selection criteria in section V.1 of this notice.

Applications for funding under the CSP CMO Grant program must—

(a) Describe the applicant's objectives in running a quality charter school program and how the program will be carried out, including—

(1) A description of how the applicant will ensure that charter schools receiving funds under this program meet the educational needs of their students, including children with disabilities and English learners (Section 4303(f)(1)(A)(x) of the ESEA); and

(2) A description of how the applicant will ensure that each charter school receiving funds under this program has considered and planned for the transportation needs of the school's students (Section 4303(f)(1)(E) of the ESEA);

(b) For each charter school currently operated or managed by the applicant, provide—

(1) Student assessment results for all students and for each subgroup of students described in section 1111(c)(2) of the ESEA;

(2) Attendance and student retention rates for the most recently completed school year and, if applicable, the most recent available 4-year adjusted cohort

[6] Per section 4305(c) of the ESEA, CSP CMO Grants have the same terms and conditions as grants awarded to State entities under section 4303. For clarity, the Department has replaced the term ''State entity'' with ''applicant'' in the requirements that derive from section 4303.

graduation rates and extended-year adjusted cohort graduation rates; and

(3) Information on any significant compliance and management issues encountered within the last 3 school years by any school operated or managed by the eligible entity, including in the areas of student safety and finance (Section 4305(b)(3)(A) of the ESEA);

(c) Describe the educational program that the applicant will implement in each charter school receiving funding under this program, including—

(1) Information on how the program will enable all students to meet the challenging State academic standards;

(2) The grade levels or ages of students who will be served; and

(3) The instructional practices that will be used (Section 4305(b)(3)(B)(ii) of the ESEA);

(d) Demonstrate that the applicant currently operates or manages more than one charter school. For purposes of this program, multiple charter schools are considered to be separate schools if each school—

(1) Meets each element of the definition of charter school under section 4310(2) of the ESEA; and

(2) Is treated as a separate school by its authorized public chartering agency and the State in which the charter school is located, including for purposes of accountability and reporting under title I, part A of the ESEA (2018 NFP);

(e) Provide information regarding any compliance issues, and how they were resolved, for any charter schools operated or managed by the applicant that have—

(1) Closed;

(2) Had their charter(s) revoked due to problems with statutory or regulatory compliance, including compliance with sections 4310(2)(G) and (J) of the ESEA; or

(3) Had their affiliation with the applicant revoked or terminated, including through voluntary disaffiliation (2018 NFP);

(f) Provide a complete *logic model* for the grant project. The logic model must include the applicant's objectives for replicating or expanding one or more high-quality charter schools with funding under this program, including the number of high-quality charter schools the applicant proposes to replicate or expand (2018 NFP);

(g) If the applicant currently operates, or is proposing to replicate or expand, a single-sex charter school or coeducational charter school that provides a single-sex class or extracurricular activity (collectively referred to as a ''single-sex educational program''), demonstrate that the existing or proposed single-sex educational program is in compliance with title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*) and its implementing regulations, including 34 CFR 106.34 (2018 NFP);

(h) Describe how the applicant currently operates or manages the high-quality charter schools for which it has presented evidence of success and how the proposed replicated or expanded charter schools will be operated or managed, including the legal relationship between the applicant and its schools. If a legal entity other than the applicant has entered or will enter into a performance contract with an authorized public chartering agency to operate or manage one or more of the applicant's schools, the applicant must also describe its relationship with that entity (2018 NFP);

(i) Describe how the applicant will solicit and consider input from parents and other members of the community on the implementation and operation of each replicated or expanded charter school, including in the area of school governance (2018 NFP);

(j) Describe the lottery and enrollment procedures that will be used for each replicated or expanded charter school if more students apply for admission than can be accommodated, including how any proposed weighted lottery complies with section 4303(c)(3)(A) of the ESEA (2018 NFP);

(k) Describe how the applicant will ensure that all eligible children with disabilities receive a free appropriate public education in accordance with part B of the Individuals with Disabilities Education Act (2018 NFP);

(l) Describe how the proposed project will assist educationally disadvantaged students in mastering challenging State academic standards (2018 NFP);

(m) Provide a budget narrative, aligned with the activities, target grant project outputs, and outcomes described in the logic model, that outlines how grant funds will be expended to carry out planned activities (2018 NFP);

(n) Provide the applicant's most recent independently audited financial statements prepared in accordance with generally accepted accounting principles (2018 NFP);

(o) Describe the applicant's policies and procedures to assist students enrolled in a charter school that closes or loses its charter to attend other high-quality schools (2018 NFP);

(p) Provide—

(1) A request and justification for waivers of any Federal statutory or regulatory provisions that the applicant believes are necessary for the successful operation of the charter schools to be replicated or expanded; and

(2) A description of any State or local rules, generally applicable to public schools, that will be waived, or otherwise not apply, to such schools (2018 NFP);

(q) Provide a needs analysis and describe the need for the proposed project, including how the proposed project would serve the interests and meet the needs of students and families in the communities the charter school intends to serve. The needs analysis, which may consist of information and documents previously submitted to an authorized public chartering agency to address need, must include, but is not necessarily limited to, the following—

(1) Descriptions of the local community support, including information that demonstrates interest in, and need for, the charter school; benefits to the community; and other evidence of demand for the charter school that demonstrates a strong likelihood the charter school will achieve and maintain its enrollment projections. Such information may include information on waiting lists for the proposed charter school or existing charter schools or traditional public schools, data on access to seats in high-quality public schools in the districts from which the charter school expects to draw students, or evidence of family interest in specialized instructional approaches proposed to be implemented at the charter school.

(2) Information on the proposed charter school's projected student enrollment, and evidence to support the projected enrollment based on the needs analysis and other relevant data and factors, such as the methodology and calculations used.

(3) An analysis of the proposed charter school's projected student demographics and a description of the demographics of students attending public schools in the local community in which the proposed charter school would be located and the school districts from which students are, or would be, drawn to attend the charter school; a description of how the applicant plans to establish and maintain a racially and socioeconomically diverse student body, including proposed strategies (that are consistent with applicable legal requirements) to recruit, admit, enroll, and retain a diverse student body. An applicant that is unlikely to establish and maintain a racially and socioeconomically diverse student body at the proposed charter school because the charter school would be located in a racially or socioeconomically

segregated or isolated community, or due to the charter school's specific educational mission, must describe—

(i) Why it is unlikely to establish and maintain a racially and socioeconomically diverse student body at the proposed charter school;

(ii) How the anticipated racial and socioeconomic makeup of the student body would promote the purposes of the CSP, including to provide high-quality educational opportunities to underserved students, which may include a specialized educational program or mission; and

(iii) The anticipated impact of the proposed charter school on the racial and socioeconomic diversity of the public schools and school districts from which students would be drawn to attend the charter school.

(4) A robust family and community engagement plan designed to ensure the active participation of families and the community that includes the following—

(i) How families and the community were, are, or will be engaged in determining the vision and design for the charter school, including specific examples of how families' and the community's input was, is, or is expected to be incorporated into the vision and design for the charter school.

(ii) How the charter school will meaningfully engage with both families and the community to create strong and ongoing partnerships.

(iii) How the charter school will foster a collaborative culture that involves the families of all students, including underserved students, in ensuring their ongoing input in school decision-making.

(5) How the charter school's recruitment, admissions, enrollment, and retention policies and practices will engage and accommodate students and families from diverse backgrounds, including English learners, students with disabilities, and students of color, including holding enrollment and recruitment events on weekends or during nonstandard work hours, making interpreters available, and providing enrollment and recruitment information in widely accessible formats (*e.g.,* hard copy and online in multiple languages; as appropriate, large print or braille for visually impaired individuals) through widely available and transparent means (*e.g.,* online and at community locations).

(6) How the charter school has engaged or will engage families and the community to develop an instructional model to best serve the targeted student population and their families, including students with disabilities and English learners.

(7) How the plans for the operation of the charter school will support and reflect the needs of students and families in the community, including consideration of district or community assets and how the school's location, or anticipated location if a facility has not been secured, will facilitate access for the targeted student population (*e.g.,* access to public transportation or other transportation options, the demographics of neighborhoods within walking distance of the school, and transportation plans and costs for students who are not able to walk or use public transportation to access the school).

(8) A description of the steps the applicant has taken or will take to ensure that the proposed charter school (1) would not hamper, delay, or negatively affect any desegregation efforts in the local community in which the charter school would be located or in the public school districts from which students are, or would be, drawn to attend the charter school, including efforts to comply with a court order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools; and (2) to ensure that the proposed charter school would not otherwise increase racial or socioeconomic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school (2022 NFP);

(r) For any existing or proposed contract with a for-profit management organization (including a nonprofit management organization operated by or on behalf of a for-profit entity), without regard to whether the management organization or its related entities exercise full or substantial administrative control over the charter school or the CSP project, provide the following information or equivalent information that the applicant has submitted to the authorized public chartering agency—

(1) A copy of the existing contract with the for-profit management organization or a description of the terms of the contract, including the name and contact information of the management organization; the cost (*i.e.,* fixed costs and estimates of any ongoing costs), including the amount of CSP funds proposed to be used toward such cost, and the percentage such cost represents of the school's total funding; the duration; roles and responsibilities of the management organization; and steps the applicant will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization, makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(2) A description of any business or financial relationship between the charter school developer and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities that will be used by the charter school;

(3) The name and contact information for each member of the governing board of the charter school and list of the management organization's officers, chief administrator, and other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c);

(4) A description of how the applicant will ensure that members of the governing board of the charter school are not selected, removed, controlled, or employed by the management organization and that the charter school's legal, accounting, and auditing services will be procured independently from the management organization);

(5) An explanation of how the applicant will ensure that the management contract is severable, severing the management contract will not cause the proposed charter school to close, the duration of the management contract will not extend beyond the expiration date of the school's charter, and renewal of the management contract will not occur without approval and affirmative action by the governing board of the charter school; and

(6) A description of the steps the applicant will take to ensure that it maintains control over all student records and has a process in place to provide those records to another public school or school district in a timely manner upon the transfer of a student from the charter school to another public school, including due to closure of the charter school, in accordance with section 4308 of the ESEA (2022 NFP); and

(s) Provide—

(1) The name and address of the authorized public chartering agency that issued the applicant's approved charter or, in the case of an applicant that has not yet received an approved charter,

the authorized public chartering agency to which the applicant has applied;

(2) A copy of the approved charter or, in the case of an applicant that has not yet received an approved charter, a copy of the charter application that was submitted to the authorized public chartering agency, including the date the application was submitted, and an estimated date by which the authorized public chartering agency will issue its final decision on the charter application;

(3) Documentation that the applicant has provided notice to the authorized public chartering agency that it has applied for a CSP grant; and

(4) A proposed budget, including a detailed description of any post-award planning costs and, for an applicant that does not yet have an approved charter, any planning costs expected to be incurred prior to the date the authorized public chartering agency issues a decision on the charter application. (2022 NFP)

Assurances: Each applicant for a CSP CMO Grant must provide the following assurances. These assurances are from sections 4303(f)(2) and 4305(b)(3)(C) of the ESEA and the 2022 NFP. The source of each assurance is provided in parentheses following each assurance.

Applicants for funds under this program must provide assurances that—

(a) The grantee will support charter schools in meeting the educational needs of their students, as described in section 4303(f)(1)(A)(x) of the ESEA. (Section 4303(f)(2)(B) of the ESEA)

(b) The grantee will ensure that each charter school receiving funds under this program makes publicly available, consistent with the dissemination requirements of the annual State report card under section 1111(h) of the ESEA, including on the website of the school, information to help parents make informed decisions about the education options available to their children, including—

(1) Information on the educational program;

(2) Student support services;

(3) Parent contract requirements (as applicable), including any financial obligations or fees;

(4) Enrollment criteria (as applicable); and

(5) Annual performance and enrollment data for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such disaggregation of performance and enrollment data shall not be required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student. (Section 4303(f)(2)(G) of the ESEA)

(c) The eligible entity has sufficient procedures in effect to ensure timely closure of low-performing or financially mismanaged charter schools and clear plans and procedures in effect for the students in such schools to attend other high-quality schools. (Section 4305(b)(3)(C) of the ESEA)

(d) Each charter school it funds has not and will not enter into a contract with a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, under which the management organization or its related entities exercises full or substantial administrative control over the charter school and, thereby, the CSP project. (2022 NFP)

(e) Any management contract between a charter school that the applicant funds and a for-profit management organization, including a nonprofit CMO operated by or on behalf of a for-profit entity, guarantees or will guarantee that—

(1) The charter school maintains control over all CSP funds, makes all programmatic decisions, and directly administers or supervises the administration of the grant;

(2) The management organization does not exercise full or substantial administrative control over the charter school (and, thereby, the CSP project), except that this does not limit the ability of a charter school to enter into a contract with a management organization for the provision of services that do not constitute full or substantial control of the charter school project funded under the CSP (*e.g.,* food or payroll services) and that otherwise comply with statutory and regulatory requirements;

(3) The charter school's governing board has access to financial and other data pertaining to the charter school, the management organization, and any related entities; and

(4) The charter school is in compliance with applicable Federal and State laws and regulations governing conflicts of interest, and there are no actual or perceived conflicts of interest between the charter school and the management organization. (2022 NFP)

(f) Each charter school that the applicant funds will post on its website, on an annual basis, a copy of any management contract between the charter school and a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, and report information on such contract to the Department, including—

(1) A copy of the existing contract with the for-profit management organization or description of the terms of the contract, including the name and contact information of the management organization; the cost (*i.e.,* fixed costs and estimates of any ongoing costs), including the amount of CSP funds proposed to be used toward such costs, and the percentage such cost represents of the charter school's total funding; the duration, roles, and responsibilities of the management organization; the steps the charter school will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization; and the steps the charter school is taking to ensure that it makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(2) A description of any business or financial relationship between the charter school developer or CMO and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities to be used by the charter school;

(3) The names and contact information for each member of the governing boards of the charter school and a list of the management organization's officers, chief administrator, and other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c); and

(4) A description of how the charter school ensured that such contract is severable and that a change in management companies will not cause the proposed charter school to close. (2022 NFP)

(g) Each charter school that the applicant funds will disclose, as part of the enrollment process, any policies and requirements (*e.g.,* purchasing and wearing specific uniforms and other fees, or requirements for family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled in the school (*e.g.,* transportation services or participation in the National School Lunch Program). (2022 NFP)

(h) Each charter school that the applicant funds will hold or participate in a public hearing in the local community in which the proposed charter school would be located to obtain information and feedback regarding the potential benefit of the charter school, which shall at least include how the proposed charter school will increase the availability of high-quality public school options for underserved students, promote racial and socioeconomic diversity in such community or have an educational mission to serve primarily underserved students, and not increase racial or socioeconomic segregation or isolation in the school districts from which students would be drawn to attend the charter school (consistent with applicable laws). Applicants must ensure that the hearing (and notice thereof) is accessible to individuals with disabilities and limited English proficient individuals as required by law, actively solicit participation in the hearing (*i.e.,* provide widespread and timely notice of the hearing), make good faith efforts to accommodate as many people as possible (*e.g.,* hold the hearing at a convenient time for families or provide virtual participation options), and submit a summary of the comments received as part of the application. The hearing may be conducted as part of the charter authorizing process, provided it meets the requirements above. (2022 NFP)

(i) Each charter school that the applicant funds will not use any implementation funds for a charter school until after the charter school has received a charter from an authorized public chartering agency and has a contract, lease, mortgage, or other documentation indicating that it has a facility in which to operate. Consistent with sections 4303(b)(1), 4303(h)(1)(B), and 4310(6) of the ESEA, an eligible applicant may use CSP planning funds for post-award planning and design of the educational program of a proposed new or replicated high-quality charter school that has not yet opened, which may include hiring and compensating teachers, school leaders, and specialized instructional support personnel; providing training and professional development to staff; and other critical planning activities that need to occur prior to the charter school opening when such costs cannot be met from other sources. (2022 NFP)

(j) Each applicant must provide an assurance that, within 120 days of the date of the grant award notification (GAN), the grantee will post on its website:

(1) A list of the charter schools slated to receive CSP funds, including the following for each school:

(i) The name, address, and grades served.

(ii) A description of the educational model.

(iii) If the charter school has contracted with a for-profit management organization, the name of the management organization, the amount of CSP funding the management organization will receive from the school, and a description of the services to be provided.

(iv) The award amount, including any funding that has been approved for the current year and any additional years of the CSP grant for which the school will receive support.

(v) The grant (redacted as necessary).

(2) As applicable for CMO grants, such a list must be updated at least annually and provide the anticipated number of charter schools that will receive CSP planning funds before securing a facility. (2022 NFP)

Note: The Department recognizes that the charter approval process may exceed the 18-month planning period prescribed under section 4303(d)(1)(B) of the ESEA. In such a case, a grantee may request a waiver from the Department under section 4303(d)(5) to enable the grantee to amend its approved application to extend the 18-month planning period prescribed by section 4303(d)(1)(B). Under section 4303(d)(5) of the ESEA, the Secretary, in his discretion, may waive any statutory or regulatory requirement over which he exercises administrative authority, except the requirements related to the definition of ''charter school'' in section 4310(2) of the ESEA, provided that the waiver is requested in an approved application and the Secretary determines that granting the waiver will promote the purposes of the CSP. A grantee also may request approval from the Department, as appropriate, to amend its approved application and budget to cover additional planning costs that it may incur due to an unexpected delay in the charter approval process.

Program Authority: Title IV, part C of the ESEA, as amended.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 76, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The 2018 NFP. (e) The 2022 NFP.

Note: As of October 1, 2024, grant applicants must follow the provisions stated in the updated Uniform Guidance (89 FR 30046, April 22, 2024) when preparing an application. For more information about these regulations please visit: *https://www.cfo.gov/resources-coffa/uniform-guidance/.*

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $400,000,000 for the CSP for FY 2025, of which we would use an estimated $72,000,000 for new awards under this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $300,000 to $20,000,000 per year.

Estimated Average Size of Awards: $2,500,000 per year.

Maximum Award: See Reasonable and Necessary Costs in section III.4 for information regarding the maximum amount of funds that may be awarded per charter school.

Estimated Number of Awards: 15–20.

Note: The Department is not bound by any estimates in this notice. The estimated range and average size of awards are based on a single 12-month budget period. We may use available funds to support multiple 12-month budget periods for one or more grantees.

Project Period: Up to 60 months.

A grant awarded by the Secretary under this competition may be for a period of not more than 5 years, of which the grantee may use not more than 18 months for planning and program design. (Section 4303(d)(1)(B) of the ESEA)

III. Eligibility Information

1. *Eligible Applicants:* CMOs. Eligible applicants may apply individually or as part of a group or consortium.

Note: Under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This competition does not involve supplement-not-supplant funding requirements.

c. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *https://www.ed.gov/about/ed-offices/ofo#Indirect-Cost-Division.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Reasonable and Necessary Costs:* The Secretary may elect to impose maximum limits on the amount of grant funds that may be used to replicate or expand a high-quality charter school (34 CFR 75.101(a)(2) and 75.104(b)).

For this competition, the maximum limit of grant funds that may be used to replicate or expand a single high-quality charter school is $2,000,000.

In accordance with 2 CFR 200.404, applicants must ensure that all costs included in the proposed budget are reasonable and necessary in light of the goals and objectives of the proposed project. Any costs determined by the Secretary to be unreasonable or unnecessary will be removed from the final approved budget.

5. *Other CSP Grants:* A charter school that previously received funds for replication or expansion under this program, or that has been awarded a subgrant or grant for opening and preparing for the operation of a new or replicated high-quality charter school, or expanding a high-quality charter school, under the CSP Grants to State Entities (SE Grants) program (ALN 84.282A) or CSP Grants to Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer Grants) program (ALNs 84.282B and 84.282E), may not receive funds under this program to carry out the same activities (see 2 CFR 200.403). However, such a charter school may be eligible to receive funds through a CSP CMO Grant awarded under this competition to expand the charter school beyond the existing grade levels or student count.

Likewise, a charter school that is included in an approved application for funding under this competition is ineligible to receive a subgrant or grant to carry out the same activities under the CSP SE Grant program (ALN 84.282A) or CSP Developer Grant program (ALNs 84.282B and 84.282E), including opening and preparing for the operation of a new charter school or replicated high-quality charter school or expanding a high-quality charter school (2 CFR 200.403).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 23, 2024 (89 FR 104528), and available at *https://www.federalregister.gov/documents/2024/12/23/2024-30488/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for this competition, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600 (Predisclosure Notification Procedures for Confidential Commercial Information), please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* Grantees under this program must use the grant funds to replicate or expand the charter school model or models for which the applicant has presented evidence of success. Specifically, grant funds must be used to carry out allowable activities, as described in section 4305(b)(1) of the ESEA. In addition, grant funds must be used to carry out one or more of the activities described in section 4303(h), which include—

(a) Preparing teachers, school leaders, and specialized instructional support personnel, including through paying costs associated with—

(1) Providing professional development; and

(2) Hiring and compensating, during the eligible applicant's planning period, one or more of the following:

(i) Teachers.

(ii) School leaders.

(iii) Specialized instructional support personnel;

(b) Acquiring supplies, training, equipment (including technology), and educational materials (including developing and acquiring instructional materials);

(c) Carrying out necessary renovations to ensure that a new school building complies with applicable statutes and regulations, and minor facilities repairs (excluding construction);

(d) Providing one-time, startup costs associated with providing transportation

to students to and from the charter school;

(e) Carrying out community engagement activities, which may include paying the cost of student and staff recruitment; and

(f) Providing for other appropriate, non-sustained costs related to the replication or expansion of high-quality charter schools when such costs cannot be met from other sources.

Further, within the context of opening and preparing for the operation of one or more replicated high-quality charter schools or expanding one or more high-quality charter schools, a portion of grant funds may be used for appropriate, non-sustained costs associated with the expansion or improvement of the grantee's oversight or management of its charter schools, provided that (i) the specific charter schools being replicated or expanded under the grant are the intended beneficiaries of such expansion or improvement; (ii) such expansion or improvement is intended to improve the grantee's ability to manage or oversee the charter schools being replicated or expanded under the grant; and (iii) the costs cannot be met from other sources (20 U.S.C. 7221b(h) and 7221d(b)(1)). In order to use grant funds for this purpose, an applicant must describe how the proposed costs are necessary to meet the objectives of the project and reasonable in light of the overall cost of the project (2 CFR 200.403).

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit and English Language Requirement:* The project narrative is where you, the applicant, address the priorities, selection criteria, and application requirements that peer reviewers use to evaluate your application. We recommend that you (1) limit the project narrative to no more than 60 pages, and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the project narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Applications must be in English, and peer reviewers will only consider supporting documents submitted with the application that are in English.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; any request to waive requirements and the justification; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the project narrative.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name, a contact person's name and email address, and the Assistance Listing Number. Applicants that do not submit a notice of intent to apply may still apply for funding.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210, the 2018 NFP, and the 2022 NFP. The maximum possible score for addressing all of the selection criteria is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses following the criterion.

In evaluating an application for a CSP CMO Grant, the Secretary considers the following criteria:

(a) *Quality of the Eligible Applicant and Adequacy of Resources (up to 35 points).*

In determining the quality of the eligible applicant and the adequacy of resources, the Secretary considers the following factors:

(1) The extent to which the academic achievement results (including annual student performance on statewide assessments, annual student attendance and retention rates, and, where applicable and available, student academic growth, high school graduation rates, college attendance rates, and college persistence rates) for educationally disadvantaged students served by the charter schools operated or managed by the applicant have exceeded the average academic achievement results for such students served by other public schools in the State (up to 15 points). (2018 NFP)

(2) The extent to which one or more charter schools operated or managed by the applicant have closed; have had a charter revoked due to noncompliance with statutory or regulatory requirements; or have had their affiliation with the applicant revoked or terminated, including through voluntary disaffiliation (up to 5 points). (2018 NFP)

(3) The extent to which one or more charter schools operated or managed by the applicant have had any significant issues in the area of financial or operational management or student safety, or have otherwise experienced significant problems with statutory or regulatory compliance that could lead to revocation of the school's charter (up to 5 points). (2018 NFP)

(4) The extent to which the budget is adequate to support the proposed project and the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (up to 5 points). (34 CFR 75.210)

(5) The level of initial matching funds or other commitment from partners, indicating the likelihood for potential continued support of the project after Federal funding ends (up to 5 points). (34 CFR 75.210)

(b) *Quality of the Needs Analysis (up to 25 points).*

In determining the quality of the needs analysis, the Secretary considers the following factors:

(1) The extent to which the needs analysis demonstrates that the proposed charter school will address the needs of all students served by the charter school, including underserved students; will ensure equitable access to high-quality learning opportunities; and demonstrates sufficient demand for the charter school (up to 10 points). (2022 NFP)

(2) The extent to which the needs analysis demonstrates that the proposed charter school has considered and mitigated, whenever possible, potential barriers to application, enrollment, and retention of underserved students and their families (up to 10 points). (2022 NFP)

(3) The extent to which the proposed charter school is supported by families and the community, including the extent to which parents and other members of the community were engaged in determining the need and vision for the school and will continue to be engaged on an ongoing basis, including in the academic, financial, organizational, and operational performance of the charter school (up to 5 points). (2022 NFP)

(c) *Quality of the Project Design and Evaluation Plan for the Proposed Project (up to 10 points).*

In determining the quality of the project design and evaluation plan for the proposed project, the Secretary considers the following factors:

(1) The quality of the logic model or other conceptual framework underlying the proposed project, including how inputs are related to outcomes (up to 2 points). (34 CFR 75.210)

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the proposed project, as described in the applicant's logic model, and that will produce quantitative and qualitative data by the end of the grant period (up to 6 points). (2018 NFP)

(3) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified, measurable, and ambitious yet achievable within the project period, and aligned with the purposes of the grant program (up to 2 points). (34 CFR 75.210)

(d) *Quality of the Management Plan (up to 30 points).*

In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The feasibility of the management plan to achieve project objectives and goals on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (up to 6 points). (34 CFR 75.210)

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (up to 6 points). (34 CFR 75.210)

(3) The adequacy of the applicant's plan to maintain control over all CSP grant funds (up to 6 points). (2022 NFP)

(4) The adequacy of the applicant's plan to make all programmatic decisions (up to 6 points). (2022 NFP)

(5) The adequacy of the applicant's plan to administer or supervise the administration of the grant, including maintaining management and oversight responsibilities over the grant (up to 6 points). (2022 NFP)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, completion of grant activities, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. See the standards in 2 CFR 170.105 to determine whether you are covered by 2 CFR part 170.

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current

performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.254, the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* The Department has developed the following performance measures for the purpose of Department reporting under 34 CFR 75.110:

(a) *Program Performance Measures.* (1) The performance measures for this program are: (i) The number of charter schools in operation around the Nation, and (ii) the percentage of fourth- and eighth-grade charter school students who are achieving at or above the proficient level on State assessments in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: The Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

(2) In accordance with 34 CFR 75.110(b), applications must describe:

(i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data.

(ii) The applicant's capacity to collect and report the quality of the performance data, as evidenced by quality data collection, analysis, and reporting in other projects or research.

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific performance measures and performance targets consistent with the objectives of the proposed project. In accordance with 34 CFR 75.110(c), applications must include the following:

(1) *Project-specific performance measures.* How each proposed project-specific performance measure would: accurately measure the performance of the project; be consistent with the program performance measures established under paragraph (a) of this section; and be used to inform continuous improvement of the project.

(2) *Baseline data.* (i) Why each proposed baseline is valid and reliable, including an assessment of the quality data used to establish the baseline; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) *Performance targets.* Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

All grantees must submit an annual performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

7. *Project Directors' Meeting:* Applicants approved for funding under this competition must attend a meeting for project directors during each year of the project. The meeting may be held virtually or in person at a location to be determined in the continental United States. Applicants may include, if applicable, the cost of attending these meetings in their proposed budgets as allowable administrative costs.

8. *Technical Assistance:* Applicants approved for funding under this competition must participate in all technical assistance offerings required by the CSP Office, including project directors' meetings and other on-site and virtual gatherings sponsored by the Department and its contracted technical assistance providers and partners throughout the performance period.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site, you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Principal Deputy Assistant Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2025–01379 Filed 1–16–25; 11:15 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-The-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding.

Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. Each filing may be viewed on the Commission's website at *https://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. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
NONE.		
Exempt:		
1. ER25–712–000	1–8–2025	National Caucus of Environmental Legislators.

Dated: January 14, 2025.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2025–01334 Filed 1–17–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP25–351–000.

Applicants: Mountain Valley Pipeline, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement—1/14/2025 to be effective 1/14/2025.

Filed Date: 1/13/25.

Accession Number: 20250113–5119.

Comment Date: 5 p.m. ET 1/27/25.

Docket Numbers: RP25–352–000.

Applicants: Mountain Valley Pipeline, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement—01/14/2025 to be effective 1/14/2025.

Filed Date: 1/13/25.

Accession Number: 20250113–5122.

Comment Date: 5 p.m. ET 1/27/25.

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.

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: *https://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: January 14, 2025.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2025–01332 Filed 1–17–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC25–3–000.

Applicants: Apple Energy LLC.

Description: Response to 12/13/2024 Deficiency Letter of Apple Energy LLC.

Filed Date: 1/13/25.

Accession Number: 20250113–5220.

Comment Date: 5 p.m. ET 2/3/25.

Docket Numbers: EC25–40–000.

Applicants: Pattern Energy Group LP.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Pattern Energy Group LP.

Filed Date: 1/13/25.

Accession Number: 20250113–5218.

Comment Date: 5 p.m. ET 2/3/25.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–3089–002.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of WMPA SA No. 7373; Project Identifier No. AG1–558 to be effective 12/31/9998.

Filed Date: 1/14/25.

Accession Number: 20250114–5137.

Comment Date: 5 p.m. ET 2/4/25.

Docket Numbers: ER24–3091–002.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to Original WMPA No. 7371; AG1–559 to be effective 12/31/9998.

Filed Date: 1/14/25.
Accession Number: 20250114–5119.
Comment Date: 5 p.m. ET 2/4/25.
Docket Numbers: ER25–919–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 6447; AE2–046 re: withdrawal to be effective 3/15/2025.
Filed Date: 1/13/25.
Accession Number: 20250113–5205.
Comment Date: 5 p.m. ET 2/3/25.
Docket Numbers: ER25–920–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to GIA SA No. 7346; Project Identifier No. AE2–339 to be effective 3/15/2025.
Filed Date: 1/13/25.
Accession Number: 20250113–5213.
Comment Date: 5 p.m. ET 2/3/25.
Docket Numbers: ER25–921–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1977R21 Nemaha-Marshall Electric Cooperative NITSA and NOA to be effective 1/1/2025.
Filed Date: 1/14/25.
Accession Number: 20250114–5027.
Comment Date: 5 p.m. ET 2/4/25.
Docket Numbers: ER25–922–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original GIA, SA No. 7471; Project Identifier No. AG1–259/AG1–260 to be effective 1/2/2025.
Filed Date: 1/14/25.
Accession Number: 20250114–5052.
Comment Date: 5 p.m. ET 2/4/25.
Docket Numbers: ER25–923–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2025–01–14_SA 3480 ATC–WEPCo 2nd Rev GIA (J850) to be effective 1/6/2025.
Filed Date: 1/14/25.
Accession Number: 20250114–5082.
Comment Date: 5 p.m. ET 2/4/25.
Docket Numbers: ER25–924–000.
Applicants: Santa Paula Energy Storage, LLC.
Description: § 205(d) Rate Filing: Santa Paula Amended Co-Tenancy and SFA to be effective 1/15/2025.
Filed Date: 1/14/25.
Accession Number: 20250114–5086.
Comment Date: 5 p.m. ET 2/4/25.
Docket Numbers: ER25–925–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2025–01–14 Certificate of Concurrence—CAISO, PG&E & Metcalf to be effective 11/29/2024.
Filed Date: 1/14/25.
Accession Number: 20250114–5102.
Comment Date: 5 p.m. ET 2/4/25.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH25–4–000.
Applicants: ECP ControlCo, LLC.
Description: ECP ControlCo, LLC submits FERC 65–B Notice of Change in Fact to Waiver Notification.
Filed Date: 1/13/25.
Accession Number: 20250113–5223.
Comment Date: 5 p.m. ET 2/3/25.

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: *https://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: January 14, 2025.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2025–01331 Filed 1–17–25; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2025–0019; FRL–12555–01–OGC]

Proposed Consent Decree, Clean Water Act Claim

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA) Administrator's March 18, 2022, memorandum regarding ''Consent Decrees and Settlement Agreements to resolve Environmental Claims Against the Agency,'' notice is hereby given of a proposed consent decree in *Delaware Riverkeeper Network et al.* v. *U.S. EPA et al.,* Docket No. 2:24-cv-05308 (E.D. Pa.). On October 2, 2024, Delaware Riverkeeper Network and Maya K. van Rossum, the Delaware Riverkeeper, filed a complaint in the United States District Court for the Eastern District of Pennsylvania. The complaint alleges that: the EPA failed to comply with its mandatory duty under the Clean Water Act (CWA) to promulgate revised water quality standards to protect aquatic life in the Delaware River within 90 days of proposal; and the EPA's failure to promulgate revised water quality standards is an unreasonable delay under the Administrative Procedure Act. The EPA seeks public input on a proposed consent decree prior to its final decision-making with regard to potential settlement of the litigation.

DATES: Written comments on the proposed consent decree must be received by February 20, 2025

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2025–0019 online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments, see the ''Additional Information About Commenting on the Proposed Consent Decree'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Katie Spidalieri, Water Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone: (202) 564–4138; email address: *Spidalieri.Katie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

While states have the primary responsibility for reviewing, establishing, and revising water quality standards for their waters, CWA section 303(c) directs the EPA to promulgate water quality standards where the EPA Administrator determines that a new or revised standard is necessary to meet the requirements of the CWA. CWA section 303(c)(4)(B). Such a determination is referred to as an ''Administrator's Determination.''

On December 1, 2022, the EPA issued an Administrator's Determination for part of the Delaware River in Delaware, New Jersey, and Pennsylvania pursuant to CWA section 303(c)(4)(B).[1] The EPA determined that two types of revised water quality standards are necessary to meet the requirements of the CWA in the Delaware River: (1) revised aquatic life designated uses that provide for propagation of fish; and (2) corresponding dissolved oxygen criteria that protect the propagation use.

On December 21, 2023, the EPA proposed revised water quality standards for an approximately 38-mile stretch of the Delaware River from river miles 108.4 to 70.0. 88 FR 88315 (December 21, 2023). Specifically, the EPA proposed a designated use of protection and propagation of resident and migratory aquatic life along with dissolved oxygen criteria to protect that use.

On August 2, 2024, the Delaware Riverkeeper Network and the Delaware Riverkeeper (collectively, Plaintiffs) sent the EPA a 60-day Notice of Intent to Sue pursuant to CWA section 505(b)(2) alleging the agency failed to promulgate revised water quality standards for a stretch of the Delaware River within 90 days of proposing them as required under CWA section 303(c)(4). On October 2, 2024, the Plaintiffs filed a complaint against the EPA in the U.S. District Court for the Eastern District of Pennsylvania. The Plaintiffs are seeking a declaratory judgement that the EPA violated the CWA and the Administrative Procedure Act by not promulgating revised water quality standards for the Delaware River within the statutory timeframe at CWA section 303(c)(4) and an injunction requiring the agency to promulgate such standards by a date certain.

The parties initiated settlement discussions, which produced the proposed consent decree.[2] Under the proposed consent decree, the EPA Administrator would be required to sign a final rule promulgating revised water quality standards for miles 108.4 to 70.0 of the Delaware River on or before June 30, 2025. In addition, the EPA would be required to file status reports with the court every thirty days after a consent decree is entered until the final rule is signed.

For a period of thirty days following the date of publication of this notice, the EPA will accept written comments relating to the proposed consent decree from persons who are not parties to the litigation. The EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments received disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CWA.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the proposed consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2025–0019) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center 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 OEI Docket is (202) 566–1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through *https://www.regulations.gov.* You may use *https://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

B. How and to whom do I submit comments?

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2025–0019 via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

If you submit an electronic comment, the EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows the EPA to contact you in case the EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. 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.

Use of the *https://www.regulations.gov* website to submit comments to the EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means the EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be

[1] The Delaware River is co-managed by multiple states, including Delaware, New Jersey, and Pennsylvania, as well as the Delaware River Basin Commission.

[2] In the litigation, the EPA filed an answer to the Plaintiffs' complaint on December 9, 2024.

marked ''late.'' The EPA does not plan to consider these late comments.

Dawn Messier,

Acting Associate General Counsel.

[FR Doc. 2025–01382 Filed 1–17–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. EPA–HQ–ORD–2020–0682; FRL 12506–01–ORD]

Notice of the Final Biofuels and the Environment: Third Triennial Report to Congress

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a final document titled, ''Biofuels and the Environment: Third Triennial Report to Congress'' (EPA/600/R–24/343F). The document was prepared by EPA's Offices of Research and Development (ORD) and Air and Radiation (OAR), in consultation with the U.S. Departments of Agriculture and Energy.

DATES: The document will be available on or about January 17, 2025.

ADDRESSES: The final report will be available primarily via the internet on *https://www.epa.gov/risk/biofuels-and-environment* or the public docket at *http://www.regulations.gov,* Docket ID: EPA–HQ–ORD–2020–0682.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Christopher Clark; phone: 202–564–4183; or email: *Clark.Christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

In 2007, Congress enacted the Energy Independence and Security Act (EISA) with the stated goals of ''mov[ing] the United States toward greater energy independence and security [and] to increase the production of clean renewable fuels.'' In accordance with these goals, EISA revised the Renewable Fuel Standard (RFS) Program, which was created under the 2005 Energy Policy Act and is administered by EPA, to increase the volume of renewable fuel required to be blended into transportation fuel to 36 billion gallons per year by 2022. Section 204 of EISA directs EPA, in consultation with the U.S. Departments of Agriculture and Energy, to assess and report triennially to Congress on the environmental and resource conservation impacts of the RFS Program.

The first report to Congress was completed in 2011 and provided an assessment of the environmental and resource conservation impacts associated with increased biofuel production and use (EPA/600/R–10/183F). The overarching conclusions of this first report were: (1) the environmental impacts of increased biofuel production and use were likely negative but limited in impact; (2) there was a potential for both positive and negative impacts in the future; and (3) EISA goals for biofuels production could be achieved with minimal environmental impacts if best practices were used and if technologies advanced to facilitate the use of second-generation biofuel feedstocks (corn stover, perennial grasses, woody biomass, algae, and waste).

The second report to Congress was completed in 2018 and reaffirmed the overarching conclusions of the 2011 Report (EPA/600/R–18/195). The 2018 Report noted that the biofuel production and use conditions that led to the conclusions of the 2011 Report had not materially changed, and that the production of biofuels from cellulosic feedstocks anticipated by both the EISA and the 2011 Report had not materialized. Noting observed increases in acreage for corn and soybean production in the period prior to and following implementation of the RFS2 Program, the 2018 Report concluded that the environmental and resource conservation impacts associated with land use change were likely due, at least in part, to the RFS and associated production of biofuel feedstocks.

This third report to Congress builds on the previous two reports and provides an update on the impacts to date and likely future impacts of the RFS Program on the environment. This report assesses air, water, and soil quality; ecosystem health and biodiversity; and other effects. This third report also includes new additions and approaches not previously included in the first and second reports. In particular, this third report includes a new attribution analysis designed to separate the effects of the RFS Program from other factors that also affect biofuel production and consumption in the United States.

II. Information About Peer Review of the Document

Peer review of ''Biofuels and the Environment: Third Triennial Report to Congress'' (External Review Draft, EPA/600/R–22/273) was managed by EPA's contractor, Eastern Research Group, Inc. (ERG). On May 9, 2022, EPA announced through an FRN (87 FR 27634) that it was seeking public comment on a pool of twenty (20) candidates identified through a previous FRN seeking nomination of experts (87 FR 5479, February 1, 2022). After considering public comment, and the balance and collective expertise of the reviewers, ERG identified two (2) additional candidates to strengthen expertise gaps in ecology, water quality, and economics, and allow a more balanced panel. On August 1, 2022, EPA announced through an FRN (87 FR 46958) that it was seeking public comment on the two (2) additional peer review candidates.

After review and consideration of public comments on the candidates submitted in response to the previous FRNs (87 FR 27634, May 9, 2022, and 87 FR 46958, August 1, 2022), EPA's contractor, ERG, selected nine (9) peer reviewers from the pool in a manner consistent with EPA's Peer Review Handbook 4th Edition, 2015 (EPA/100/B–15/001) and independently conducted a conflict of interest (COI) screening of candidates to ensure that the selected experts have no COI in conducting this review. Candidates' combined expertise spanned the following disciplines: economics, engineering, agronomics, land use change, remote sensing, air quality, biogeochemistry, water quality, hydrology, conservation biology, limnology, and ecology.

A peer review meeting to discuss the ''Biofuels and the Environment: Third Triennial Report to Congress (External Review Draft)'' (EPA/600/R–22/273) was held February 24–28, 2023, via webinar. EPA also announced a 60-day public comment period on January 3, 2023, via **Federal Register** notice (88 FR 72). The public comment period on the ''Biofuels and the Environment: Third Triennial Report to Congress (External Review Draft)'' (EPA/600/R–22/273) closed on March 6, 2023; EPA received fifteen public comments. The public were also invited to provide oral public comments at the February peer review meeting. The report was shared with the Office of Management and Budget for interagency review on November 13, 2023. After considering peer review, public comments, and interagency comments, EPA has prepared the final ''Biofuels and the Environment: Third Triennial Report to Congress''.

Wayne Cascio,

Director, Center for Public Health and Environmental Assessment.

[FR Doc. 2025–01385 Filed 1–17–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–12549–01–R6]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Shell Chemical LP, Harris County, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated December 19, 2024, denying a petition dated June 11, 2024, from Air Alliance Houston (the Petitioner). The petition requested that the EPA object to a Clean Air Act (CAA) title V operating permit issued by the Texas Commission on Environmental Quality (TCEQ) to Shell Chemical LP, for its Deer Park Chemical Plant located in Harris County, Texas. In addition, and as a part of the Order, the EPA Administrator found that cause exists to reopen the Shell Chemical Deer Park Chemical Plant permit pursuant to 40 CFR part 70.7.

FOR FURTHER INFORMATION CONTACT: Jonathan Ehrhart, EPA Region 6 Office, Air Permits Section, (214) 665–2295, *ehrhart.jonathan@epa.gov.* The final order and petition are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

SUPPLEMENTARY INFORMATION: The EPA received a petition from Air Alliance Houston dated June 11, 2024, requesting that the EPA object to the issuance of operating permit no. O1668, issued by TCEQ to Shell Chemical LP, for its Deer Park Chemical Plant located in Harris County, Texas. On December 19, 2024, the EPA Administrator issued an order denying the petition while concurrently making a finding that cause exists to reopen the Shell Chemical Deer Park Chemical Plant permit under 40 CFR 70.7. The order itself explains the basis for the EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than March 24, 2025.

Dated: January 14, 2025.

James McDonald,

Director, Air and Radiation Division, Region 6.

[FR Doc. 2025–01352 Filed 1–17–25; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2025–3023]

Agency Information Collection Activities: Submission to the Office of Management and Budget for Review and Approval; Comment Request; EIB 92–64 Application for Short-Term Multi-Buyer Export Credit Insurance Policy

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Comments must be received on or before February 20, 2025 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* (EIB 92–64), by email *edward.coppola@exim.gov,* or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038, Attn: OMB 3048–0018.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Edward Coppola, *edward.coppola@exim.gov,* 202–565–3717.

SUPPLEMENTARY INFORMATION: The Application for Exporter Short Term Single Buyer Insurance form will be used by entities involved in the export of U.S. goods and services, to provide EXIM with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements. Export-Import Bank customers will be able to submit this form on paper or electronically.

The application tool can be reviewed at: *https://img.exim.gov/s3fs-public/pub/pending/eib92-64_2025_508.pdf.*

Title and Form Number: EIB 92–64, Application for Exporter Short Term Single Buyer Insurance.

OMB Number: 3048–0018.

Type of Review: Regular.

Need and Use: The information requested enables the applicant to provide EXIM with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 310.

Estimated Time per Respondent: 1.50 hours.

Annual Burden Hours: 465 hours.

Frequency of Reporting of Use: As needed.

Dated: January 14, 2025.

Andrew Smith,

Records Officer.

[FR Doc. 2025–01250 Filed 1–17–25; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Appointments Panel Meeting

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Appointments Panel, a subcommittee of the Federal Accounting Standards Advisory Board (FASAB), will hold meetings on February 3, 19, and 20, 2025. The Appointments Panel makes recommendations regarding appointments for non-Federal member positions.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

SUPPLEMENTARY INFORMATION: The meetings are closed to the public. The reason for the closure is that matters covered by 5 U.S.C. 552b(c)(2) and (6) will be discussed. Any such discussions will involve matters that relate solely to internal personnel rules and practices of the sponsor agencies and the disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. 1009(d), portions of advisory committee meetings may be closed to the public where the head of the agency to which the advisory committee reports determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code. The determination shall be in writing and shall contain the reasons for the determination. A determination has been made in writing by the U.S. Government Accountability Office, the U.S. Department of the Treasury, and the Office of Management and Budget, as required by section 10(d) of FACA, that such portions of the meetings may be closed to the public in

accordance with subsection (c) of section 552b of title 5, United States Code.

*Authority:*31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001–1014.

Dated: January 15, 2025.

Monica R. Valentine,

Executive Director.

[FR Doc. 2025–01321 Filed 1–17–25; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FR ID 274218]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission 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.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before February 20, 2025.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (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 burden estimates; (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 the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–XXXX.

Title: Facilitating Implementation of Next Generation 911 Services (NG911).

Form Number: N/A.

Type of Review: New information collection.

Respondents: State, Local, or Tribal Government, and business or other for-profit entities.

Number of Respondents and Responses: 1,541 respondents; 2,837 responses.

Estimated Time per Response: 2—40 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection is contained in Sections 1, 2, 4(i), 201, 214, 222, 225, 251(e), 301, 303, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 214, 222, 225, 251(e), 301, 303, 316, 332, and the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, as amended, 47 U.S.C. 615 note, 615, 615a, 615a–1, 615b; and Section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 47 U.S.C. 615c.

Total Annual Burden: 9,932 hours.

Total Annual Cost: $902,000.

Needs and Uses: In a Report and Order released on July 19, 2024, FCC 24–78, published at 89 FR 78066, September 24, 2024, the Commission adopted rules to advance the nationwide transition to Next Generation 911 (NG911).[1] These rules require wireline providers, Commercial Mobile Radio Service (CMRS) providers, covered text providers, providers of interconnected Voice over internet Protocol (VoIP) services, and providers of internet-based Telecommunications Relay Service (internet-based TRS) (collectively, OSPs) to take actions to start or continue the transition to NG911 in coordination with 911 Authorities. Associated with these rules, the Commission seeks OMB approval for notification and recordkeeping requirements applicable to 911 Authorities and OSPs, as described in more detail herein. Specifically, the rules require OSPs to take steps in two phases to complete all translation and routing to deliver 911 traffic, including associated routing and location information, in the requested IP-based format. These requirements are intended to correspond to and complement the readiness phases for 911 Authorities so that once a 911 Authority is ready to receive NG911 traffic in a specific IP format, the OSP will be required to deliver it in that format. In Phase 1, OSPs will be required to deliver 911

[1] The Report and Order was corrected via two errata released on September 5, 2024, and October 1, 2024.

traffic in a basic Session Initiation Protocol (SIP) format to NG911 Delivery Points designated by the 911 Authority in the 911 Authority's state or territory, and complete connectivity testing. In Phase 2, OSPs will be required to deliver 911 traffic in SIP format that complies with NG911 commonly accepted standards to NG911 Delivery Points designated by the 911 Authority in the 911 Authority's state or territory, install and put into operation all necessary equipment, software, and other infrastructure, and complete connectivity testing. For each phase, OSPs must meet certain implementation deadlines. OSPs must bear the financial responsibility for such transmission, including costs associated with completing any needed TDM-to-IP translation and the costs of delivering associated routing and location information in the requested IP-based format.

This rulemaking necessitates three information collections. First, under 47 CFR 9.31(a) and (b), 911 Authorities that wish to make Phase 1 or Phase 2 valid requests for delivery of 911 traffic in IP-based formats must provide notification containing certain certifications and information to either serving OPSs or to a registry to be made available by the Commission.

Second, in 47 CFR 9.31(c), OSPs that wish to challenge 911 Authorities' valid requests may submit a petition to the Public Safety and Homeland Security Bureau (PSHSB) within 60 days of the receipt of a Phase 1 or 2 request from a 911 Authority. Such challenge petitions must meet applicable procedural requirements and must be in the form of an affidavit that contains certain supporting information. The affected 911 Authority may file an opposition to the OSP's petition, and parties may file replies to oppositions. Filing parties must serve a copy of the document on the other party at the time of filing.

Third, in 47 CFR 9.34, 911 Authorities and OSPs may enter into voluntary mutual agreements that establish terms different from the Commission's rules. Within 30 days of the date when any such agreement is executed, or subsequently modified or terminated, the participating OSP must notify the Commission and provide information about alternative terms and transition deadlines.

OSPs will use the information collected pursuant to Section 9.31(a) and (b) that is submitted by 911 Authorities to trigger their NG911 transition obligations described in Section 9.29(a) and (b), respectively, and their NG911 implementation deadlines set forth in Section 9.30(a) and (b), respectively. OSPs will receive notifications either directly from 911 Authorities, or from a registry where 911 Authorities may submit notifications. To the extent that 911 Authorities submit their valid request notifications in a registry made available by the Commission pursuant to Section 9.31(a)(5) and (b)(6), PSHSB will use the information collected pursuant to Section 9.31(a) and (b) to monitor the progress of valid requests at each phase of the NG911 transition and to keep track of implementation deadlines associated with each valid request.

PSHSB will use the information collected pursuant to Section 9.31 that is submitted by the OSPs in their petitions challenging 911 Authorities' valid requests, as well as information submitted by 911 Authorities who file oppositions to such petitions and information submitted by OSPs who file replies to such oppositions, to determine whether to pause the implementation deadline for that OSP, affirm the request of the 911 Authority as valid, or take other action as necessary. The requirements should simplify the enforcement and complaint process for both OSPs and 911 Authorities regarding OSPs' implementation deadlines.

In addition, the information collected pursuant to Section 9.34(a) and (b) provides the Commission with awareness of any changes to the obligations of OSPs under the rules.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2025–01387 Filed 1–17–25; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1096; FR ID 273963]

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 (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. 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 March 24, 2025. 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 Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 Office of Management and Budget (OMB) control number.

OMB Control Number: 3060–1096.

Title: Prepaid Calling Card Service Provider Certification, WC Docket No. 05–68.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 121 respondents; 1,452 responses.

Estimated Time per Response: 2.5 hours–20 hours.

Frequency of Response: Quarterly reporting requirement, third party disclosure requirement and recordkeeping requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i), 201, 202 and 254 of the Communications Act of 1934, as amended.

Total Annual Burden: 12,100 hours.

Total Annual Cost: No cost.

Needs and Uses: Prepaid calling card service providers must report quarterly the percentage of interstate, intrastate and international access charges to carriers from which they purchase transport services. Prepaid calling card providers must also file certifications with the Commission quarterly that include the above information and a statement that they are contributing to the federal Universal Service Fund based on all interstate and international revenue, except for revenue from the sale of prepaid calling cards by, to, or pursuant to contract with the Department of Defense (DoD) or a DoD entity.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2025–01388 Filed 1–17–25; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: January 28, 2025 at 10 a.m. ET

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 498 846 088 #; or via web: *https://www.frtib.gov/*

FOR FURTHER INFORMATION CONTACT: James Kaplan, Director, Office of External Affairs, (202) 864–7150.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the December 19, 2024, Board Meeting Minutes
2. Monthly Reports
(a) Participant Report
(b) Investment Report
(c) Legislative Report
3. Quarterly Reports
(d) Investment Review
(e) Budget Review
(f) Audit Status
4. Recordkeeper Service Update
5. OTS Office Presentation
6. Annual Expense Ratio Review
7. Internal Audit Update
8. OPR Full Withdrawal Survey

Closed Session

9. Information covered under 5 U.S.C. 552b (c)(9)(B), and (c)(10).
Authority: 5 U.S.C. 552b (e)(1).

Dated: January 15, 2025.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2025–01329 Filed 1–17–25; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice and request for comment.

SUMMARY: The Federal Trade Commission (FTC) requests that the Office of Management and Budget (OMB) extend for three years the current Paperwork Reduction Act (PRA) clearance for information collection requirements contained in the rules and regulations under the Pay-Per-Call Rule (Rule). That clearance expires on January 31, 2025.

DATES: Comments must be received by February 20, 2025.

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. The *reginfo.gov* web link is a United States Government website produced by OMB and the General Services Administration (GSA). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

FOR FURTHER INFORMATION CONTACT: P. Connell McNulty, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Mail Code CC–6316, 600 Pennsylvania Ave. NW, Washington, DC 20580, (202) 326–2061.

SUPPLEMENTARY INFORMATION: *Title:* Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 (Pay-Per-Call Rule), 16 CFR part 308.

OMB Control Number: 3084–0102.

Type of Review: Extension of a currently approved collection.

Abstract: The existing reporting and disclosure requirements of the Pay-Per-Call Rule are mandated by the Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA) to help prevent unfair and deceptive acts and practices in the advertising and operation of pay-per-call services and in the collection of charges for telephone-billed purchases. The information obtained by the Commission pursuant to the reporting requirement is used for law enforcement purposes. The disclosure requirements ensure that consumers are told about the costs of using a pay-per-call service, that they will not be liable for unauthorized non-toll charges on their telephone bills, and how to deal with disputes about telephone-billed purchases.

Likely Respondents: telecommunications common carriers (subject to the reporting requirement only, unless acting as a billing entity), information providers (vendors) offering one or more pay-per-call services or programs, and billing entities.

Estimated Annual Hours Burden: 949,536 hours (24 + 949,512).

Reporting: 24 hours for reporting by common carriers.

Disclosure: 949,512 [(19,440 hours for advertising by vendors + 19,992 hours for preamble disclosure which applies to every pay-per-call service + 6,480 burden hours for telephone-billed charges in billing statements (applies to vendors; applies to common carriers if acting as billing entity) + 13,000 burden hours for dispute resolution procedures in billing statements (applies to billing entities) + 890,600 hours for disclosures related to consumers reporting a billing error (applies to billing entities)].

Estimated annual cost burden: $49,402,048 (solely relating to labor costs).[1]

Request for Comment

On November 4, 2024, the FTC sought public comment on the information collection requirements associated with the Rule. 89 FR 87575.[2] The Commission received one germane comment, which supported the continued collection of information under the Rule. The Commission received a second comment that mischaracterized the Commission's November 4, 2024 Notice and request for comment as a notice of proposed rulemaking. The commenter asserted that the Commission's Notice raised constitutional and ''statutory overreach'' concerns. The Commission's Notice, as discussed, sought public comment on

[1] Non-labor (*e.g.,* capital/other start-up) costs are generally subsumed in activities otherwise undertaken in the ordinary course of business (*e.g.,* business records from which only existing information must be reported to the Commission, pay-per-call advertisements or audiotext to which cost or other disclosures are added, etc.). To the extent that entities incur operating or maintenance expenses, or purchase outside services to satisfy the Rule's requirements, staff believe those expenses are also included in (or, if contracted out, would be comparable to) the annual burden hour and cost estimates provided below (where such costs are labor-related), or are otherwise included in the ordinary cost of doing business (regarding non-labor costs).

[2] On November 27, 2024, the FTC filed a Notice to correct an incorrect date in its Notice of November 4, 2024; namely that the current PRA clearance expires on January 31, 2025, and not January 30, 2024. See 89 FR 93602.

existing information collection requirements associated with the Rule, which the Commission has undertaken for years and seeks to continue. It did not concern a proposed rulemaking. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rules.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2025–01302 Filed 1–17–25; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Advisory Board on Radiation and Worker Health, National Institute for Occupational Safety and Health

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC) announces the following meeting of the Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board). This meeting is open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person listed in the Addresses section below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference (information below), limited only by the number of audio conference lines available (150).

DATES: The meeting will be held on February 25, 2025, from 11 a.m. to 1 p.m., EST. Written comments must be received on or before February 18, 2025.

ADDRESSES: You may submit comments by mail to: Dr. Rashaun Roberts, National Institute for Occupational Safety and Health (NIOSH), 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226.

Meeting Information: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the passcode is 9933701.

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Officer, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226. Telephone: (513) 533–6800; Toll Free 1(800) 232–4636; Email: *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines, which have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC.

The charter was issued on August 3, 2001, renewed at appropriate intervals, and rechartered under Executive Order 13179 on March 22, 2024. Unless continued by the President, the Board will terminate on September 30, 2025, consistent with E.O. 14109 of September 29, 2023.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy (DOE) facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Considered: The agenda will include discussions on the following: Update on the Cybersecurity Modernization Initiative; workgroup and subcommittee reports; update on the status of SEC petitions; and plans for the April 2025 Advisory Board meeting. Agenda items are subject to change as priorities dictate. For additional information, please contact Toll Free 1–800–232–4636.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2025–01318 Filed 1–17–25; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Child Support Annual Data Report and Instructions (OCSS–157) (Office of Management and Budget #: 0970–0177)

AGENCY: Office of Child Support Services; Administration for Children and Families; U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF), Office of Child Support Services (OCSS), is requesting the Office of Management and Budget (OMB) to approve the Child Support Annual Data Report and Instructions (OCSS–157), with minor revisions, for an additional three years. The current OMB approval expires on March 31, 2025.

DATES: *Comments due* February 20, 2025. OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: States must annually provide OCSS with their child support information pertaining to case inventory, performance status, and accomplishments in the following areas: paternity establishment; services requested and provided; medical support; collections due and distributed; staff; program expenditures; non-cooperation and good cause; and administrative enforcement. The information collected from the OCSS–157 allows OCSS to (1) report child support activities to Congress as required by law; (2) calculate States' incentive measures for performance and assess performance indicators used in the program; and (3) help OCSS monitor and evaluate State child support programs.

OCSS made minor revisions to the instructions and report to make them easier for the respondents to understand and complete. Additionally, OCSS updated the name of the federal child support office from the Office of Child Support Enforcement (OCSE) to the Office of Child Support Services (OCSS).

Respondents: State Child Support Agencies.

ANNUAL BURDEN ESTIMATES

Information collection instrument	Total number of annual respondents	Number of annual responses per respondent	Average annual burden hour per response	Annual burden hours
OCSS Annual Report and Instructions (OCSS–157)	54	1	7	378

Authority: 42 U.S.C. 652(a) and (g) and 669.

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2025–01245 Filed 1–17–25; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Organization, Functions, and Delegations of Authority; Indian Health Service Headquarters, Office of Information Technology and the Office of Management Services, Part GAG, GAL

AGENCY: Indian Health Service, Department of Health and Human Services.

ACTION: Final notice.

SUMMARY: This Notice advises the public that the Indian Health Service (IHS) proposes Part GAG, GAL, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), 47053–67, December 11, 1987, as amended, November 9, 1995, December 19, 1996, as amended July 12, 2004, as amended, May 6, 2005, as amended October 17, 2005, as amended, August 21, 2009, and most recently December 26, 2018, is hereby amended to reflect a reorganization of the Indian Health Service (IHS). The new organizational structure was approved by the Secretary of Health and Human Services on January 2, 2025. The purpose of this reorganization proposal is to update the current approved IHS, Office of Information Technology (GAG) and the Office Management Services (GAL) in their entirety and replace them with the following:

SUPPLEMENTARY INFORMATION: The IHS is an Operating Division within the Department of Health and Human Services (HHS) and is under the leadership and direction of a Director who is directly responsible to the Secretary of Health and Human Services. The IHS Headquarters is reorganizing the following major component: Office of Information Technology (OIT) and the Office of Management Services (OMS).

Authority: 44 U.S.C. 3101.

Office of Information Technology (OIT) (GAG)

(1) Provides Chief Information Officer (CIO) services and advises the Director, Indian Health Service (IHS), on all aspects of information resource management, information technology (IT), and Health IT; (2) ensures Agency compliance with related Federal statutes, executive orders, regulations, and policies; (3) directs the development, implementation, and maintenance of policies, procedures, standards, and architecture for information resource management, IT, and Health IT activities and services in the IHS; (4) provides IHS Area Offices and Service Units with sufficient training and oversight to manage IT and Health IT responsibilities; (5) directs the IT enterprise architecture, governance, category management, and Artificial Intelligence (AI) programs for the Agency; (6) directs strategic planning and budgeting processes for information resources, IT, and Health IT; (7) oversees the development and implementation of information resource

management, IT, and Health IT initiatives in the IHS including the IHS Health IT Modernization Program; (8) directs the design, development, implementation, and support of robust information systems and services used in the IHS; (9) directs the activities of the IHS IT Investment Review Board (ITIRB) in assessing, implementing, and reviewing the Agency's investment in information systems; (10) manages contracts and associated chargebacks for information resource management, IT, and Health IT related software, equipment, and support services in collaboration with appropriate acquisition authorities; (11) through the Chief Information Security Officer, directs the development, implementation, and management of the IHS IT Cybersecurity program to protect the information resources, IT, and Health IT of the IHS; (12) oversees compliance with Federal cybersecurity laws, regulations, and policy and issuance of IHS information security policies, procedures, and guidelines; (13) oversees all aspects of the IHS cybersecurity program including audit compliance, risk and coordination, IHS security architecture and engineering design, and the security-related incident response program, IHS security awareness training programs, IHS information system disaster recovery, contingency planning and response, and cybersecurity vulnerability management; (14) leads the IHS Cybersecurity Operations Center to monitor IT/Health IT systems 24 hours a day, seven days a week; (15) oversees IT systems privacy; (16) provides IT services and support to the IHS, Tribal, and Urban Indian Health Programs (I/T/U), including the Resource and Patient Management System (RPMS), the Electronic Health Record (EHR), and the National Patient Information Reporting System (NPIRS); (17) provides informatics leadership through the Chief Medical Information Officer and Chief Health Informatics Officer to strategically align clinical and technical activities to improve healthcare services; (18) identifies opportunities for improvement of IHS healthcare and public health services through the adoption of new technologies; (19) manages the IHS Health Information Management (HIM) program; (20) oversees the development of IHS HIM policies and practice standardization including issuance of enterprise-wide HIM standard operating procedures; (21) ensures that IHS Area Offices and Service Units have sufficient HIM training and oversight to manage HIM responsibilities; (22) provides guidance on accreditation standards, legislative, and regulatory requirements concerning HIM to ensure IHS compliance; (23) oversees the analyses and management of enterprise data developed, acquired, or stored by the IHS; (24) ensures accessibility to IT services; (25) directs and leads all aspects of IHS IT and Health IT customer experience, OIT self-determination activities, OIT public affairs and communications needs, IT asset management, knowledge management, and service desk activities including the provision of IHS IT and Health IT systems end user support; (26) furnishes IHS-wide video conferencing solutions and services including telehealth support; (27) provides program and project management and related support for IHS-developed and acquired information resources and technology products and services; (28) provides contract management support for information resources, IT, and Health IT initiatives, including strategic sourcing efforts and enterprise wide IT procurements and chargebacks; (29) advises the IHS Director on all aspects of privacy and the IHS-wide privacy program including people, processes, and technologies; (30) ensures compliance with applicable privacy and system of records notice requirements, develops and evaluates privacy statutes, regulations, and policies, and manages privacy risks consistent with the Agency's mission; (31) manages, administers, implements and monitors the IHS's Paperwork Reduction Act and Office of Management and Budget (OMB) information collection/activities, including providing guidance, requirements and procedures for obtaining OMB approvals and/or extensions for IHS information collections; (32) provides leadership and guidance for the IHS Forms Management Program; (33) oversees the IHS Records Management Program through the IHS Records Management Officer; (34) advises the IHS Director on all aspects of records management and provides Agency-wide Records Management Program leadership, guidance and support; (35) ensures the accountability and integrity of records management and disposition of records including litigation holds; (36) develops and recommends policies and procedures for the protection and disposition of IHS records and oversees the evaluation of records management activities in the IHS; (37) develops and implements a management control system for evaluation of records management functions IHS-wide; (38) participates in cross-cutting issues and processes that involve information resources, IT, and Health IT including, but not limited to, emergency preparedness/security, budget formulation, self-determination issues, Tribal shares computations, and resolution of audit findings as may be needed and appropriate; and (39) represents the IHS and enters into IT and Health IT agreements with Federal, Tribal, State and other organizations.

Division of Information Technology (GAGA)

(1) Provides IT services and advises the CIO on all aspects of Health IT; (2) develops and supports clinical and business practice healthcare applications such as the RPMS and the EHR; (3) develops healthcare data export applications to feed analytical processes; (4) obtains system and business requirements from stakeholders for system design; (5) provides quality assurance and risk management for software development; (6) develops, implements, and maintains policies, procedures, and standards for system development and technology products and services in the IHS; (7) develops and maintains Health IT strategic planning documents;

(8) develops and maintains the IHS enterprise architecture; (9) develops and implements Health IT management initiatives in the IHS; (10) ensures the IHS IT infrastructure resource consolidation and standardization efforts support the IHS healthcare delivery and program administration; (11) develops, maintains, and manages the centralized processes and systems that support interoperability between internal and external stakeholders for the transmission and receipt of health information; (12) provides training and documentation for IHS developed software implementation, maintenance, and best practices; (13) provides input into HIM policy and procedures and ensures development activity complies with regulations and policy; (14) ensures development and operation activity complies with applicable security guidance, regulations, and policy; (15) provides program and project management and related support for IHS developed and acquired information resources and technology products and services; (16) provides contract management support for Health IT initiatives; (17) participates in cross-cutting issues and processes that involve IT and Health IT; and (18) represents the IHS to Federal, Tribal, State, and other organizations.

Division of Program Management and Budget (GAGB)

(1) Advises the CIO on all business aspects of information resources, program and project management; (2) develops information resource policies and procedures; (3) develops the IHS IT budget and related documents; (4) provides budget analyses and reports to the CIO; (5) develops strategies for presenting the IHS IT budget to I/T/Us; (6) provides technical analyses, guidance, and support for IHS capital planning and investment control activities; (7) manages the IHS portfolio management tool; (8) manages the activities of the IHS ITIRB in assessing, implementing and reviewing the Agency's information systems; (9) develops program and project management policies and procedures; (10) identifies alternatives among internal and external sources and recommends the best sources to supply information resource and technology products and services to the IHS; (11) develops information resource and technology project governance structures to support effective program and project management; (12) provides and coordinates IHS Healthcare Connect Fund Services under the Rural Health Care Program (RHC), a division of the Universal Service Fund (USF) and administered by the Universal Service Administrative Company (USAC), to offset the high cost of rural telecommunication services; (13) provides IHS Section 508 coordination services; (14) provides Radio Frequency Spectrum Management coordination services; (15) provides contract liaison services to appropriate acquisition authorities; (16) provides program and project management and related support for IHS developed and acquired information resources and technology products and services; (17) provides IT contract management support and manages enterprise-wide IT chargebacks for IT initiatives; (18) participates in crosscutting issues and processes that involve IT and Health IT; and (19) represents the IHS to Federal, Tribal, State, and other organizations.

Division of Information Technology Operations (GAGC)

(1) Advises the CIO on all aspects of implementing and deploying computer systems including RPMS; (2) develops, implements, and maintains IHS standards, policies, and procedures for IT operations; (3) maintains LISTSERV capabilities; (4) performs web monitoring and filtering services; (5) designs and implements websites in compliance with Section 508 of the Rehabilitation Act (29 U.S.C. 794d) accessibility regulations; (6) operates and maintains data centers; (7) provides Domain Name Services; (8) designs, implements, and maintains IHS' backbone network infrastructure; (9) monitors network infrastructure for anomalies; (10) supports enterprise office automation and cybersecurity in Microsoft 365 and subsequent environments; (11) provides program and project management support for systems design and deployment to ensure customer satisfaction; (12) provides contract management support for IT initiatives; (13) participates in crosscutting issues and processes that involve information resources and technology program and project management; and (14) represents the IHS to Federal, Tribal, State, and other organizations.

Microsoft 365 Services Branch (GAGC1)

(1) Manages and maintains Microsoft 365 applications and services Agency-wide; (2) oversees user access, security policies, and compliance within the Microsoft 365 environment; (3) identifies, researches, recommends, and implements Microsoft 365 solutions and applications such as Teams, Office, Outlook, PowerApps, PowerAutomate, Power BI, OneDrive, and SharePoint; (4) develops new applications to improve productivity using the Microsoft Power Platform, Teams, Office, Graph, SharePoint that support integrations with multiple IHS tools and data sets; and (5) builds Artificial Intelligence solutions using Microsoft Copilots and Azure AI.

Division of Information Security (GAGD)

(1) Advises the CIO on all aspects of information security; (2) develops, implements, and monitors the IHS Information Security program to ensure adequate protection and security of information systems; (3) oversees performance of required security activities and serves as the main point of contact for cybersecurity support and guidance; (4) manages IHS cybersecurity audit response and coordination and regularly reviews audit and system log reports; (5) coordinates activities with internal and external organizations reviewing the IHS's information resources for fraud, waste, and abuse; (6) advises the CIO on IHS risk and compliance issues related to information system authorization and accreditation; (7) manages IHS security architecture and engineering design; (8) directs the IHS cybersecurity incident response program; (9) oversees development and maintenance of information security policies, procedures, and guidelines to safeguard information resources, IT, and Health IT systems; (10) develops and implements employee information security awareness training programs; (11) manages the Agency's information system disaster recovery and contingency planning; (12) ensures development and review of IHS IT security plans and information system security documentation with system owners; (13) manages the IHS Cybersecurity Operations Center (CSOC) to monitor IT systems 24 hours a day, seven days a week; (14) serves as the OIT's lead for information system privacy, including development of privacy policies for IT systems and the assessment of privacy controls for IT systems; (15) directs the continuous process of cybersecurity vulnerability management; (16) provides program and project management and related support for IHS-developed and acquired information resources and technology products and services regarding information security; (17) provides contract management support for IT initiatives regarding information security; (18) participates in crosscutting issues and processes that involve information security; and (19) represents the IHS to Federal, Tribal, State, and other organizations regarding information security.

Information Systems Security Officers Branch (GAGD1)

(1) Advises the Division of Information Security (DIS) Director on the security of information systems; (2) develops, recommends, and oversees the implementation of policies, procedures, and standards in support of information systems security; (3) develops and maintains information system security documentation with the system owner; (4) ensures required security activities are performed; (5) regularly reviews audit and system log reports; (6) serves as the main point of contact for cybersecurity support and guidance; and (7) maintains relationships and consults with IHS, Federal, Tribal, State, and other organizations.

Cybersecurity Audit Response and Coordination Branch (GAGD2)

(1) Advises the DIS Director on internal and external audit-related activities; (2) develops, recommends, and oversees the implementation of policies, procedures, and standards in support of audit response and coordination; (3) provides program level support for the tracking and remediation

of information system deficiencies and resolution of audit findings as may be needed and appropriate; and (4) maintains relationships and consults with IHS, Federal, Tribal, State, and other organizations.

Cybersecurity Risk and Compliance Branch (GAGD3)

(1) Advises the DIS Director on risk and compliance issues related to information system authorization and accreditation; (2) develops, recommends, and oversees the implementation of policies, procedures, and standards in support of information system authorization and accreditation; (3) assesses the risk and magnitude of harm that could result from unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of IHS; (4) conducts security assessments of information systems; (5) maintains accreditation documentation for all evaluated information systems; and (6) maintains relationships and consults with IHS, Federal, Tribal, State, and other organizations.

Cybersecurity Architecture and Engineering Branch (GAGD4)

(1) Advises the DIS Director on security architecture and engineering design; (2) develops, recommends, and oversees the implementation of policies, procedures, and standards in support of security architecture and engineering design; (3) manages technical architecture and engineering design projects for security program initiatives; (4) reviews and evaluates evolving technologies; and (5) maintains relationships and consults with IHS, Federal, Tribal, State, and other organizations.

Cybersecurity Incident Response Branch (GAGD5)

(1) Advises the DIS Director on security-related incident response; (2) develops, recommends, and oversees the implementation of policies, procedures, and standards in support of incident response; (3) responds to security-related incidents on the IHS network; (4) provides post-incident reporting and analysis; (5) reviews and evaluates incident response toolsets; and (6) maintains relationships and consults with IHS, Federal, Tribal, State, and other organizations.

Cybersecurity Policy and Security Awareness Branch (GAGD6)

(1) Advises the DIS Director on security policies from internal and external authorities; (2) develops, recommends, and oversees the implementation of policies, procedures, and standards in support of all aspects of information security; (3) maintains awareness of evolving policy and security directive changes from internal and external authorities; (4) develops, maintains, and tracks compliance for the annual information system security awareness training; (5) develops security awareness education and training materials; and (6) maintains relationships and consults with IHS, Federal, Tribal, State, and other organizations.

Disaster Recovery and Contingency Planning Branch (GAGD7)

(1) Advises the DIS Director on information system disaster recovery and contingency planning; (2) develops, recommends, and oversees the implementation of policies, procedures, and standards in support of disaster recovery and contingency planning; (3) develops and maintains information system disaster recovery documentation with the system owner; (4) coordinates testing and execution of disaster recovery plans; (5) reviews and evaluates technologies to support disaster recovery and contingency response capabilities; and (6) maintains relationships and consults with IHS, Federal, Tribal, State, and other organizations.

Cybersecurity Operations Center Branch (GAGD8)

(1) Provides centralized IHS cybersecurity operations support for network monitoring, incident response, cyber threat intelligence collection, and threat information sharing through the Cybersecurity Operations Center; (2) develops, recommends, and oversees the implementation of policies, procedures, and standards in support of the Cybersecurity Operations Center; (3) monitors all IHS networks, systems, and external facing applications and sites to detect suspicious activity 24 hours a day, seven days a week; (4) monitors high-value asset security to ensure mission-critical systems and data are protected; (5) categorizes, prioritizes, and documents security events, including incident alerting and sorting for additional investigation; (6) disseminates patch availability for vulnerabilities and shares advisories across the enterprise; (7) analyzes malware through dynamic and static methods; (8) coordinates incident analysis, correlation, and available response strategies with the Cybersecurity Incident Response Branch; (9) reviews and analyzes threat intelligence to maintain awareness and enhance capabilities; and (10) maintains relationships and consults with the IHS, Federal, Tribal, State, and other organizations.

Cybersecurity Privacy Branch (GAGD9)

(1) Provides oversight and serves as the Agency's lead for privacy of IT Systems including the assessment of privacy controls for IT systems; (2) develops, recommends, and oversees the implementation of policies, procedures, and standards in support of the privacy of IT systems; (3) evaluates IT systems that collect personally identifiable information (PII) and ensures adequate protection of the security and privacy of PII; (4) coordinates privacy impact assessments (PIA) on all IHS IT systems (developmental and operational); (5) maintains IT system PIAs and makes them publicly available; (6) ensures adequate security and privacy practices and safeguards have been incorporated in information system lifecycle plans; and (7) maintains relationships and consults with IHS, Federal, Tribal, State, and other organizations.

Cybersecurity Vulnerability Management Branch (GAGD10)

(1) Manages the continuous process of identifying, assessing, reporting, managing, and remediating security vulnerabilities identified in all software, firmware, and hardware within the IHS; (2) develops, recommends, and oversees the implementation of policies, procedures, and standards in support of security vulnerability management; (3) supports all systems, subsystems, and system components owned by or operated on behalf of IHS with efficient vulnerability assessment techniques, procedures, and capabilities; (4) provides a process for all IHS components to submit both newly discovered and not publicly known vulnerabilities to the Vulnerability Management Team as soon as practicable; (5) conducts vulnerability assessments of IHS's IT infrastructure; and (6) maintains relationships and consults with IHS, Federal, Tribal, State, and other organizations.

Division of Health Information Technology Modernization and Operations (DHITMO) (GAGE)

(1) Advises the CIO on the development, implementation, and maintenance of policies, procedures, and standards for Health IT modernization resources, technology products, and services; (2) oversees engineering, technical architecture, and engineering design projects for Health IT modernization program initiatives;

(3) develops and maintains Health IT modernization strategic planning documents; (4) develops and maintains the governance framework to support modernization activities; (5) provides acquisition, IT capital planning and investment control, and contract management support for IT initiatives regarding Health IT; (6) directs modernization system and software testing; (7) provides oversight and management of the modernization test environments; (8) manages and controls IT activities of modernization projects throughout the system development life cycle; (9) develops, deploys, and implements Health IT management initiatives; (10) ensures quality of products, services, and infrastructures of technology modernization supporting IHS healthcare delivery and program administration standards; (11) supports the alignment of technology and business organizational change; (12) provides program and project management support for IHS developed and acquired information resources and technology products and services; (13) provides division administrative support services including human resource acquisition management, performance, and talent development; (14) provides professional communication development, editing, and records management service; (15) assists in the capture of contractor security clearance artifacts and management; (16) participates in crosscutting issues and processes that involve Health IT; and (17) represents the Division to the IHS, Federal, Tribal, State, and other organizations.

Business Management and Capital Planning Branch (GAGE1)

(1) Advises the DHITMO Director on modernization products and services in support of Health IT modernization; (2) develops, recommends, and oversees the implementation of policies and procedures for modernization products and services in support of Health IT modernization; (3) oversees acquisition protocols for modernization products and services in support of Health IT modernization; (4) provides advice, technical consultation, and training to DHITMO staff on project lifecycle cost estimates, acquisition packages, and capital planning and investment control artifacts; (5) manages contracts in support of Health IT modernization; (6) maintains fiscal commitment registers in coordination with Division of Program Management and Budget (DPMB) and the Office of Finance and Accounting; and (7) conducts fund reconciliations in support of the division operating budget.

Program Management Operations Branch (GAGE2)

(1) Advises the DHITMO Director on Health IT modernization program and project management; (2) develops, recommends, and oversees the implementation of policies, procedures, and standards in support of integrated Health IT modernization program and project management practices; (3) defines, integrates, and manages the Health IT modernization governance framework across the Health IT enterprise; (4) provides program and project management oversight, support, and controls of enterprise Health IT modernization projects throughout the system development life cycle; and (5) maintains relationships and consults with the IHS, Federal, Tribal, State, and other organizations.

Architecture and Engineering Branch (GAGE3)

(1) Advises the DHITMO Director on Health IT modernization architecture and engineering design; (2) develops, recommends, and oversees the implementation of policies, procedures, and standards in support of Health IT modernization architecture and engineering design; (3) manages engineering, technical architecture, and engineering design projects for modernization program initiatives; (4) validates requirements and configurations of data structures, interfaces for operational acceptance and implementation; (5) reviews and evaluates evolving IT and HIT product strategy; and (6) maintains relationships and consults with IHS, Federal, Tribal, State, and other organizations.

Organizational Change Management Branch (GAGE4)

(1) Advises the DHITMO Director on Health IT and business initiative organizational change management; (2) develops, recommends, and oversees the implementation of policies, procedures, and standards in support of Health IT and business initiative organizational change management throughout I/T/U healthcare programs; (3) establishes and matures organization change capabilities and documentation baseline; (4) manages the effect of new business processes, new technology, shifting economic landscapes, and changes in organizational structure and culture within the enterprise; (5) plans and manages operational readiness, training, and communication of changes; (6) develops measures to demonstrate benefits of change adoption; (7) manages partner engagement, readiness/deployment, and risk; (8) evaluates and analyzes the I/T/U workforce status, planning, and strategy effort to support Health IT modernization which will impact the entire IHS organization; (9) assesses the baseline (current state) for key functions and capabilities required of the IHS organization impacted by modernization; (10) develops and implements a future state of new functions and capabilities, aligned to competencies and estimated workload of the future; (11) develops and implements a gap analysis to define function and skill gaps that need to be resolved as IHS progresses through modernization; (12) conducts strategic planning, facilitates partner engagement, and manages organizational change management operations; (13) engages with I/T/U healthcare programs to identify opportunities and challenges to incorporate in communications, engagement training, implementation, deployment, and risk/mitigation; (14) assesses and documents lessons learned through deployment and stakeholder feedback; (15) ensures appropriate consideration of the I/T/U environment is incorporated and factored into program planning, implementation, and deployment; and (16) influences change and maintains relationships with IHS, Federal, Tribal, State, and other organizations.

Deployment Branch (GAGE5)

(1) Advises the DHITMO Director on modernization enterprise deployment activities; (2) develops, recommends, and oversees the implementation of policies, procedures, and standards in support of modernization enterprise deployment activities; (3) plans, manages, and controls IT deployment projects throughout the system development life cycle; (4) analyzes alternative deployment strategies and selects or develops deployment strategy; (5) ensures operational environment is established and ready to accept the deployed solution (facilities, infrastructure, trained staff, help desk, etc.); (6) serves as the primary point of contact to end-users on matters related to deployment management; (7) directs the solution delivery schedule; (8) deploys, installs, and activates software and hardware which has passed all stages of verification and tests; (9) establishes solution performance targets and assesses performance of deployed or phased roll-outs against performance targets; (10) liaises between I/T/U users, system administrators, and application development staff to support the implementation of technology; and (11) maintains relationships and consults

with IHS, Federal, Tribal, State, and other organizations.

Product Management Branch (GAGE6)

(1) Advises the DHITMO Director on the strategy, design, configuration, and optimization of software products of the IHS EHR; (2) evaluates solution functional workflows, feature releases, and application configurations; (3) maintains enterprise application configuration baselines; (4) validates new application features and functionality for impact to established baselines; (5) advises and maintains relationships with EHR clinical and business end-users, clinical advisory groups, and clinician users of all disciplines on product functionality and engages with engineering teams; (6) ensures application capabilities are aligned to regulatory requirements and standards for Certified Health Information Technology; (7) contributes to the development of enterprise policy and guidance; (8) monitors application performance and patterns associated with functionality for human-centered design and best practices; (9) researches and documents EHR clinical and business functionality change requests on behalf of change control boards, governance bodies, and project teams; and (10) implements program/project initiatives for improving software functionality, programmatic internal controls, and program reporting.

Division of Enterprise Governance and Architecture (GAGG)

(1) Advises the CIO on all aspects of IT governance and enterprise architecture; (2) establishes and maintains a robust enterprise architecture program that enhances the value of IT and Health IT used in support of the IHS mission; (3) develops, implements, and maintains policies, procedures, and standards for enterprise governance and architectural strategy in the IHS to support IHS healthcare delivery and program administration; (4) leads the development of the IHS IT Strategic plan and participates in organizational strategic planning to ensure IT and Health IT systems support IHS goals, mission, and objectives; (5) provides Category Management services to ensure compliance with Federal mandates and to enact standardizations of hardware, software, and technical support contracts; (6) develops, implements, and maintains policies, procedures, and standards for optimal development, management, and use of information resource management and technology products, data, and services within the IHS; (7) performs analysis of business structure and processes and addresses Agency goals through the refinement of the IHS enterprise architecture; (8) establishes and guides the evolution of the IHS's business, systems, and technologies; (9) develops the holistic view of the IHS's environment and its dependencies to address a planned and improved, but not yet realized condition of processes, operations, or technologies through enterprise-wise standards and organizational governance; (10) provides program and project management and related support for IHS developed and acquired information resources and technology products and services; (11) provides contract management support for enterprise-wide IT contracts and acquisitions; (12) drives implementation of the IHS Artificial Intelligence (AI) strategy, stands up the IHS AI governance structure, coordinates the IHS response to AI-related federal mandates, and fosters collaboration across the IHS; (13) participates in crosscutting issues and processes that involve IT and Health IT; and (14) represents the IHS to Federal, Tribal, State, and other organizations.

Division of Data Management and Analytics (GAGH)

(1) Advises the CIO on all aspects of enterprise data developed, acquired, or stored by the IHS; (2) develops, implements, and maintains policies, procedures, and standards for data acquired, managed, manipulated, and stored in the enterprise-wide IT and Health IT systems of the IHS; (3) develops long-term strategies for optimal development, management, and use of data within the IHS; (4) develops and deploys Agency-wide data and analytical platforms and tools, as well as a future roadmap that supports and anticipates stakeholder needs; (5) develops and matures the IHS data ecosystem, including the development of enterprise data solutions, services, policies, and processes; (6) promotes data as an Agency asset and transforms the Agency into a data-driven organization; (7) develops and matures the IHS enterprise-wide analytical capabilities including the development of artificial intelligence and real-time dash-boarding capabilities; (8) develops, acquires, maintains and supports the organizational-level data acquired, managed, manipulated, secured and stored in the enterprise-wide IT and Health IT systems of the IHS; (9) develops data policies and determines the best way to leverage the data that is collected internally and is available externally; (10) aligns data/data governance in accordance with the Enterprise Architecture framework; (11) liaisons with Data Stewards, Privacy, and other stakeholders to define/enforce data privacy and security rules; (12) manages enterprise data models, metadata catalogs, glossaries, dictionaries and lineage, in alignment with the International Organization for Standardization (ISO) best practices; (13) provides program and project management and related support for IHS-developed and -acquired information resources and technology products and services; (14) provides contract management support for IT initiatives; (15) participates in cross-cutting issues and processes that involve IT and Health IT; and (16) represents the IHS to Federal, Tribal, State, and other organizations.

Division of Customer Experience (DCX) (GAGJ)

(1) Advises the CIO and Deputy CIO on all aspects of IHS IT and Health IT customer experience, OIT public affairs and communications needs, IT asset management, knowledge management, and service desk activities; (2) oversees development, implementation, and maintenance of DCX policies and procedures; (3) directs the development and implementation of Agency initiatives that improve customer relations, experiences, and communication with OIT, Federal partners, Tribes, and Urban Indian organizations; (4) leads performance improvement initiatives that follow human-centered design principles to improve customer relations, customer experience, and internal user experience; (5) oversees planning, coordination, and execution of all OIT internal and external communications and public affairs; (6) manages OIT self-determination activities including development, maintenance, and publication of the OIT Service Catalog, OIT Programs, Functions, Services, and Activities, and Tribal Leader/Urban Indian Organization Leader correspondence; (7) represents OIT at Tribal Delegation Meetings, Tribal conferences, and other forums internal and external to IHS to present OIT's program, services, functions, and activities (PSFAs) and Tribal shares and develops remediation plans for resolution of Tribal issues for OIT senior leadership; (8) oversees lifecycle management of enterprise information resources and technology products including application software, hardware and peripherals; (9) coordinates with DHITMO for emerging EHR support needs and revisions to workflows; (10) oversees IHS-wide Service Desk operations; (11) centralizes the DCX knowledge management system

across OIT; (12) directs specialized projects to solve IT and Health IT procurement problems for customers; (13) manages end user and IT employee training and education; (14) provides contract management support for IT initiatives; (15) manages the DCX budget, human resources, performance management, and strategic planning; (16) participates in cross-cutting issues and processes that involve IT and Health IT; and (17) represents the IHS to Federal, Tribal, State, and other organizations.

Information Technology Customer Experience Branch (GAGJ1)

(1) Advises the DCX Director on improvements to IT and Health IT products, solutions, and services to improve the customer experience; (2) develops, recommends, maintains, and implements OIT customer experience policies and procedures; (3) collects and analyzes quantitative and qualitative data to capture Voice of the Customer and creates process flows from the IT and Health IT customer's perspective (*e.g.,* journey maps and personas); (4) collects business requirements and sustains IT and Health IT service contracts between IHS and Area offices; (5) develops and integrates continuous improvement approaches and methodologies to enhance the IT and Health IT customer experience; (6) identifies opportunities to streamline processes and eliminate bottlenecks impacting the IT and Health IT customer experience and internal user experience; (7) prioritizes high-value and high-impact IT and Health IT customer experience initiatives; (8) defines goals and metrics to identify trends and better understand the IT customer experience; (9) manages technology and process changes, including cost, schedule, quality, risk, stakeholder management, and organization change; (10) manages complex customer cases and resolves requests the Service Desk cannot address; (11) participates in resolution of cross-cutting issues and processes that involve IT and Health IT customer experiences; and (12) represents the DCX to Federal, Tribal, State, and other organizations.

Information Technology Communications Branch (GAGJ2)

(1) Advises the DCX Director on OIT internal and external communications and public affairs activities; (2) develops, recommends, maintains, and implements OIT communications policies and procedures; (3) directly supports all OIT public affairs and communications needs in coordination with IHS Public Affairs and Executive Secretariat; (4) directly supports all OIT Tribal Consultation/Urban Confer communications and congressional engagement communication needs; (5) communicates IT and Health IT initiatives and associated changes, including the management of customer engagement and communication strategies; (6) ensures broad dissemination of IT and Health IT Service changes and information campaigns; (7) manages communications and messaging for cross-cutting issues and processes that involve IT and Health IT; (8) identifies IHS IT/Health IT training needs; (9) in coordination with other OIT organizations, plans and executes end user and IT employee training and education for both compliance and uptake of new IT capabilities; and (10) represents the DCX to Federal, Tribal, State, and other organizations.

Information Technology Asset Management Branch (GAGJ3)

(1) Advises the DCX Director on IT asset management including software, hardware, and peripheral assets; (2) develops, recommends, maintains, and implements OIT IT asset management policies and procedures; (3) provides efficient, transparent, and timely support to leverage, and manage enterprise software and hardware solutions; (4) tracks and projects enterprise requirements for software, mobile devices, hardware, and peripheral needs according to the lifecycle plan of each product; (5) identifies customer requirements for end-user hardware, peripherals, and software; (6) manages the acquisition and administration of enterprise-wide computer programs and applications, including software licenses, operating systems, hardware, peripheral equipment, and mobile devices; (7) administers, installs, and maintains enterprise-wide desktop application software; (8) administers, installs, and maintains enterprise-wide computer hardware, peripheral equipment, operating systems, and mobile devices, including enterprise-level preparation of end-user equipment; (9) maintains and publishes the OIT Service Catalog; (10) maintains and serves as the OIT repository for IT service level agreements; (11) maintains and serves as an OIT repository for Authority to Operate (ATO) certificates for solutions and services in the OIT Service Catalog; (12) manages accountability for IT property throughout the IHS; and (13) represents the DCX to Federal, Tribal, State, and other organizations.

Information Technology Knowledge Management Branch (GAGJ4)

(1) Advises the DCX Director and Deputy CIO on knowledge management activities; (2) develops, recommends, maintains, and implements OIT knowledge management policies and procedures; (3) ensures OIT adherence to information handling policies and supports user information and file organization, sharing, and storage; (4) analyzes and improves the efficiency and transparency of OIT enterprise services and knowledge management framework and services; (5) collaborates with all OIT organizations to promote the use of the organization's knowledge assets; (6) develops and maintains end-user backup systems, including SharePoint development, data tagging, archiving, and automatic cloud backup of end-user data; (7) develops software documentation for end users; (8) creates self-service articles for multiple applications; (9) manages and coordinates IT professional development training for OIT staff; (10) conducts reviews, develops reports, and alerts organizational users on training updates; and (11) represents the DCX to Federal, Tribal, State, and other organizations.

Service Desk Operations Branch (GAGJ5)

(1) Advises the DCX Director on Service Desk activities; (2) develops, recommends, maintains, and implements OIT service desk operations policies and procedures; (3) manages national and Headquarters service desk requests and tickets; (4) delivers IHS service desk support 24 hours a day, seven days a week; (5) provides a single point of contact (SPOC) for end-user computer systems and associated hardware and operating systems service requests and their resolution; (6) provides a SPOC for end-user EHR, desktop, and office automation software service requests and their resolution; (7) builds and maintains an IT Infrastructure Library (ITIL) used as a knowledge base and self-service portal for customers; (8) proactively detects and solves complex reoccurring incidents and improves processes through development of action plans to address future incidents; (9) provides service desk metrics on the team's effectiveness, including a variety of key performance indicators such as calls per service desk technician, first call resolution, turnaround time, and client satisfaction; (10) provides end user telecommunications support; (11) furnishes IHS-wide video conferencing solutions and services; (12) collaborates

with other DCX branches to identify and implement business process improvement processes; and (13) represents the DCX to Federal, Tribal, State, and other organizations.

Office of Management Services (OMS) (GAL)

(1) Advises the IHS Director on all aspects of the management of grants, acquisitions, personal property and fleet management, Indian Health Manual (IHM) directives, and the regulations program, inclusive of Freedom of Information Act (FOIA) requests, and provides Agency-wide guidance and support for these programs; (2) formulates, administers, and coordinates the review and analysis of IHS-wide policies in the IHM, including delegations of authority, and provides guidance on development; (3) develops and oversees the implementation of policies, procedures and delegations of authority for the IHS, including IHS grants management activities, and grants added to self-governance compacts; (4) ensures that IHS policies and practices for the administrative functions identified above are consistent with applicable regulations, directives and guidance from higher echelons in the HHS and other Federal oversight agencies; (5) advises the IHS Director on regulatory issues related to the IHS; (6) provides overall coordination and leadership for policies, services, including the continuity of operations plans, deployment, and public health infrastructure for the IHS Headquarters (HQ) emergency preparedness plans consistent with those of the Department of Homeland Security and the HHS, addressing the IHS mission critical elements of emergency plans; (7) provides leadership and direction of activities for continuous improvement of management accountability and administrative systems for effective and efficient program support services IHS-wide; (8) ensures the accountability and integrity of grants and acquisition management, personal property utilization and disposition of IHS resources; (9) oversees and administers the Agency FOIA activities; (10) participates in cross-cutting issues and processes, including but not limited to, quality assurance, internal controls, recruitment, budget formulation, and resolution of audit findings as may be needed and appropriate; (11) coordinates with HQ Offices on the development of emergency preparedness plans, policies, and services, including the continuity of operations plans, deployment, and public health infrastructure, as appropriate; (12) provides support with approvals and adherence to policies for HQ regarding Agency conference and meeting approvals; (13) assures that the IHS OMS services, policies, procedures, and practices support IHS Indian Self-Determination Act policies; and (14) oversees and coordinates the annual development and submission of the Agency's Federal Activities Inventory Reform Act report to the HHS.

Division of Asset Management (DAM) (GALA)

(1) Plans, develops, and administers the IHS personal property and supply management program in conformance with Federal personal property management laws, regulations, policies, procedures, practices, and standards; (2) interprets regulations and provides advice on execution and coordination of personal property and supply management policies and programs; (3) administers management systems and methods for planning, utilizing, and reporting on personal property and supply programs, including the precious metals recovery program and IHS personal property and supply accountability and control systems; (4) provides guidance and serves as principal administrative authority for IHS on Federal personal property and supply management laws, regulations, policies, procedures, practices, and standards; (5) conducts surveys and studies involving evaluation and analysis of the personal property and supply management activities IHS-wide; (6) maintains liaison with the HHS and the General Services Administration (GSA) on personal property and supply management issues and programs affecting the IHS; (7) plans, develops and administers the IHS Fleet Management Program; (8) prepares reports on IHS personal property and supply management activities; and (9) administers the local HQ personal property management program to include receiving, tagging, storage and disposal in addition to conducting the annual inventory for all HQ locations.

Division of Administrative and Emergency Services (DAES) GALB

(1) Administers physical security, facility management, space management services, parking management, the IHS mail and commercial printing programs, and Homeland Security Presidential Directive 12 (HSPD–12) badge issuance for HQ; (2) serves as point of contact with the HHS, Administration for Strategic Preparedness and Response (ASPR)/Secretary's Operation Center, and the GSA on logistics and issues affecting the IHS; (3) plans, develops and administers the Mail and Commercial Printing Programs; (4) provides leadership, development, and execution of special HQ office support projects for office relocations, and inter- and intra-Agency activities; (5) coordinates with OIT to provide telecommunication services to HQ; (6) administers Physical Security, Facility Management, Space Management Services, Telecommunication Services, and Parking Management within HQ; (7) provides overall coordination and leadership for the IHS HQ emergency preparedness plans consistent with those of the Department of Homeland Security and HHS, addressing the IHS mission critical elements of emergency plans; (8) provides leadership for the development of emergency preparedness plans, policies, and services, including the continuity of operations plans, deployment, and public health infrastructure; (9) coordinates IHS HQ with the IHS Area Offices activities and available resources of other government and non-government programs for essential services related to homeland security and emergency preparedness; (10) coordinates periodic national emergency preparedness exercises with the HHS and Area Offices; (11) maintains and administers the HQ emergency preparedness equipment including the office-site and alternative locations; (12) advocates for the emergency preparedness needs and concerns of American Indian and Alaska Native (AI/AN) and promotes these program activities at the local, state, national, and international levels; and (13) serves as an information gathering and dissemination point for local and national emergency preparedness information including situational awareness.

Division of Acquisition Policy (DAP) (GALC)

(1) Manages all aspects of the Agency's acquisition program in accordance with Federal acquisition regulations, policies, and initiatives; (2) manages all aspects of the Agency's acquisition program consistent with Federal acquisition regulations, policies, initiatives, and guidance from higher echelons in HHS and Federal oversight agencies; (3) advises the OMS Director, Deputy Director for Management Operations, and other senior staff of proposed legislation, regulations, and directives that affect contracting in the IHS; (4) provides leadership for compliance reviews of all IHS acquisition operations and oversees completion of necessary corrective actions; (5) collaborates on Agency conference management specific to

acquisitions or contracts; (6) manages the Agency's acquisition workforce training and certification programs; (7) manages the IHS Contract Information System and controls entry of data into HHS Contract Information System; (8) serves as the IHS contact point for contract protests and HHS contact for contract-related issues; (9) oversees and implements the agency's contract planning, solicitation, review, negotiation, award, post-award administration, and contract closeout activities; (10) processes unsolicited proposals for the IHS; (11) coordinates the IHS Small Business programs; (12) oversees compliance with the Buy Indian Act; (13) manages the Agency's Government Purchase Card (GPC) program; and (14) manages and oversees compliance and oversight of all acquisition operations activities within the Agency.

Division of Grants Management (DGM) (GALD)

(1) Directs grants management and operations for the IHS; (2) authorizes, awards and administers discretionary grants and cooperative agreements for IHS financial assistance programs; (3) provides guidance for the resolution of audit findings for grant programs; (4) manages the IHS grants training and certification program; (5) continuously assesses grants operations; (6) oversees implementation of corrective action plans for recipients receiving IHS discretionary grant support; (7) reviews and makes recommendations for improvements in current grantee and potential grantee management systems; (8) serves as the IHS liaison to HHS Office of Grants and the public for discretionary grants and cooperative agreements authorized by the IHS; (9) maintains the SAM.gov Assistance Listings (formerly the Catalog of Federal Domestic Assistance) for IHS financial assistance programs; (10) provides guidance technical assistance, grants-related training and assistance for IHS staff, grantees, and applicants; (11) liaison to the HHS Quality Service Management Office (QSMO) for Grants; (12) controls data entry into the grant award system; (13) maintains the official, electronic grant files for funded grants and controls data entry into the grant award system; (14) maintains the official, electronic grant files for funded grants; (15) coordinates payment to scholarship recipients in coordination with the Division of Health Professions Support Office of Human Resources; (16) manages the clearance and approval process for all IHS grant funding notices in *Grants.gov*; and (17) reviews and coordinates inter- and intra-agency agreements as well as Memoranda of Understanding in collaboration with HQ Offices.

Division of Regulatory and Policy Coordination (DRPC) (GALE)

(1) Manages the IHS's overall regulations program and responsibilities, including determining the need for and developing plans for changes in regulations, developing or assuring the development of needed regulations, and maintaining the various regulatory planning processes; (2) serves as IHS liaison with the Office of the Federal Register (FR) on matters relating to the submission and clearance of documents for publication in the FR; (3) assures proper Agency clearance and processing of FR documents; (4) informs management and program officials of regulatory activities of other Federal agencies; (5) advises the OMS Director on such matters as regulations, related policy issues, and administrative support issues; (6) manages the retrieval and transmittal of information in response to requests received under the FOIA, in collaboration with the Public Affairs Staff; (7) coordinates with Office of General Counsel (OGC) to determine disclosure or deny release of IHS records under FOIA; (8) coordinates requests for information with the Area FOIA coordinators; (9) identifies and informs the IHS Privacy Officer of FOIA related difficulties across the IHS; (10) ensures the security of sensitive and/or confidential information when responding to FOIA issues; (11) researches and applies legal determinations to respond requests and releasable material; (12) maintains and updates various regulatory agendas; (13) formulates, administers, and supports IHS-wide policies, delegations of authority, and organizations and functions development; (14) provides leadership, on behalf of the IHS Director, to functional area managers at IHS HQ in developing, modifying, and overseeing the implementation of IHS policies and procedures; (15) provides analysis, advisory, and assistance services to IHS managers and staff for the development, clearance, and filing of IHS directives and delegations of authority; (16) serves as principal advisor and source for technical assistance for establishment or modification of organizational infrastructures, functions, and Standard Administrative Code configurations; (17) advises the IHS Director and serves as liaison with OGC on such matters as litigation, regulation, related policy issues, and administrative support issues; and (18) ensures the security of sensitive and/or confidential information when responding to FOIA and other regulatory issues.

Section GA–40, Indian Health Service—Delegations of Authority

All delegations of authority and re-delegations of authority made to IHS officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

Xavier Becerra,

Secretary of Health and Human Services.

[FR Doc. 2025–00535 Filed 1–17–25; 8:45 am]

BILLING CODE 4166–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and grant applications the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Phase 1 Clinical Trial Contract Review.

Date: February 10, 2025.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Address: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Meeting Format: Virtual Meeting.

Contact Person: Joel A Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223 *joel.saydoff@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders A Study Section NSD–A Review Meeting.

Date: February 13–14, 2025.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Meeting Format: Virtual Meeting.

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–402–0288 *natalia.strunnikova@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: January 14, 2025.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–01330 Filed 1–17–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council for Human Genome Research, February 10, 2025, 9 a.m. to February 11, 2025, 5 p.m., National Institutes of Health, Capital Gateway Building, 6700B Rockledge Drive, Room 1100, Bethesda, MD 20892 which was published in the **Federal Register** on January 10, 2025, 90 FR 2710.

Amendment to change the start time of the open session from 10 a.m. to 11:30 a.m. The meeting is partially closed to the public.

Dated: January 14, 2025.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–01327 Filed 1–17–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, TEP–5A: SBIR Review Meeting, March 3, 2025, 11 a.m. to 4 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W534, Rockville, Maryland, 20850 which was published in the **Federal Register** on December 26, 2024, FR Doc 2024–30711, 89 FR 105062.

This notice is being amended to change the virtual meeting date from March 03, 2025, 11 a.m. to 4 p.m. to March 4, 2025, 11 a.m. to 4 p.m. The meeting times, format, and location will stay the same. The meeting is closed to the public.

Dated: January 14, 2025.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–01328 Filed 1–17–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2024–N074; FXES11130300000–245–FF03E00000]

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 scientific research to promote conservation or other 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 February 20, 2025.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* ESXXXXXX; see table in **SUPPLEMENTARY INFORMATION**).

- *Email (preferred method): permitsR3ES@fws.gov.* Please refer to the respective application number (*e.g.,* Application No. ESXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

FOR FURTHER INFORMATION CONTACT: Nathan Rathbun, 612–713–5343 (phone); *permitsR3ES@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

Background

The ESA prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

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.

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES43605A	Dan Cox, Akron, OH ..	Add new species—tri-colored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), northern long-eared bat (*M. septentrionalis*), and gray bat (*M. grisescens*).	Add new States—CO, DC, LA, NM, TX—to existing authorized States: AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture with mist nets or harp traps, handle, collect non-intrusive measurements, release.	Amend.
ES69825D	Michigan State University, Hickory Corners, MI.	Add new species—Karner blue butterfly (*Lycaeides melissa samuelis*)—to existing authorized species: Poweshiek skipperling (*Oarisma poweshiek*) and Mitchell's satyr (*Neonympha mitchellii*).	MI	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, captive breed, captive rear, release.	Amend.
ES46522D	John Enz, Ponte Vedra, FL.	Add new species—gopher tortoise (*Gopherus polyphemus*)—to existing authorized species: rusty patched bumble bee (*Bombus affinis*).	Add new States—AL, FL, LA, MS—to existing authorized States: CT, DE, DC, GA, IL, IN, IA, KY, ME, MD, MA, MI, MN, MO, NH, NJ, NY, NC, ND, OH, PA, RI, SC, SD, TN, VT, VA, WV, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Add new activities—mark, radio telemetry—to existing authorized activities: capture, handle, release.	Renew and amend.
TE33366D	Huron Pines, Gaylord, MI.	Hungerford's crawling water Beetle (*Brychius hungerfordi*).	MI	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, relocate, salvage release.	Renew.
TE95096C	Duncan Schanz, Schoharie, NY.	Add new species—tri-colored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), northern long-eared bat (*M. septentrionalis*), and gray bat (*M. grisescens*).	Add new States—AL, AR, CO, CT, GA, IN, IA, KS ME, MN, MO, MT, NE, NH, NC, ND, NM, OK, OH, RI, SC, SD, TN, TX, VT, WI—to existing authorized States—IL, KY, NY, TN, VA WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture with mist nets, handle, radio tag, collect non-intrusive measurements, release.	Amend and renew.
PER14371439	Kirk Barnett, Columbia, MO.	New species—tri-colored bat (*Perimyotis subflavus*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*M. septentrionalis*), and gray bat (*M. grisescens*).	AL, AR, CO, CT, DC, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NE, NH, NJ, NM, NY, NC, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture with mist nets and harp traps, handle, radio tag, collect non-intrusive measurements, release.	New.
PER14335512	Carmelina Ardito, Roanoke, VA.	New species—tri-colored bat (*Perimyotis subflavus*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*M. septentrionalis*), Ozark big-eared Bat (*Corynorhinus townsendii ingens*), and gray bat (*M. grisescens*).	AL, AR, CO, CT, DC, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NE, NH, NJ, NM, NY, NC, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture with mist nets and harp traps, handle, radio tag, collect non-intrusive measurements, release.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to 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.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Service, Midwest Region.

[FR Doc. 2025–01342 Filed 1–17–25; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2024–0133; FXES11140800000–223–FF08ECAR00]

Incidental Take Permit Application for the Quino Checkerspot Butterfly and Western Spadefoot; Draft Habitat Conservation Plan and Draft Environmental Assessment; Alpine Park Project, Community of Alpine, San Diego County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from the County of San Diego for an incidental take permit under the Endangered Species Act. If granted, the permit would authorize take of the Quino checkerspot butterfly (*Euphydryas editha quino*), federally listed as endangered, and the western spadefoot (*Spea hammondii*), an amphibian species federally proposed as threatened, incidental to otherwise lawful activities associated with construction and operation of a 25-acre active recreation park and habitat restoration and management within mitigation areas associated with the project. We invite comments from the public and local, State, Tribal, and Federal agencies on the applicant's draft habitat conservation plan and the draft environmental assessment, which we have prepared pursuant to the National Environmental Policy Act. We will take comments into consideration before deciding whether to issue an incidental take permit.

DATES: *Submitting Comments:* We must receive any written comments on or before February 20, 2025.

ADDRESSES: *Obtaining Documents:* The application, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–R8–ES–2024–0133.

Submitting Written Comments: You may submit your written comments using one of the following methods:

Online: http://www.regulations.gov. Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2024–0133.

U.S. mail: Public Comments Processing, Attn: Docket No. FWS–R8–ES–2024–0133; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments on *https://www.regulations.gov.* This generally means that we will post online any personal information that you provide. We request that you submit comments by only one of the methods above. For additional information about submitting comments, see Public Availability of Comments under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Eric Porter, Fish and Wildlife Biologist, by email at *eric_porter@fws.gov* or via phone at 442–287–2203. Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We have received an application from the County of San Diego (applicant) for an incidental take permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the potential take of the Quino checkerspot butterfly (*Euphydryas editha quino*), federally listed as endangered, and the western spadefoot (*Spea hammondii*), an amphibian species federally proposed as threatened, incidental to otherwise lawful activities at the Alpine Park (project) site, as described in the applicant's draft habitat conservation plan (conservation plan). The proposed project would be located in the community of Alpine in San Diego County, California.

Background

Section 9 of the ESA (16 U.S.C. 1538) and Federal regulations promulgated pursuant to section 4(d) of the ESA (16 U.S.C. 1533) prohibit the take of endangered and threatened animals without special exemption. Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for endangered and threatened species are set forth in title 50 of the Code of Federal Regulations (CFR) at part 17, sections 17.22 and 17.32.

The National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requires Federal agencies to analyze their proposed actions to determine whether the actions may significantly affect the human environment. In the NEPA analysis, the Federal agency will identify the effects, as well as possible mitigation for effects on environmental resources, that could occur with the implementation of the proposed action and alternatives. The Federal action in this case is the Service's proposed issuance of an incidental take permit for the federally endangered Quino checkerspot butterfly and the federally proposed threatened western spadefoot.

Permit Application

The applicant has submitted a draft conservation plan that describes the activities that would be covered by the permit, including construction of the active recreation park and impacts associated with habitat maintenance and restoration. To minimize the risk of incidental take, the applicant would employ seasonal restrictions and preconstruction surveys and potential translocation. To mitigate the impact of the incidental take, the applicant proposes to protect and manage the 67.5-acre Alpine Park Preserve, enhance

Quino checkerspot butterfly habitat, and create breeding pools for western spadefoot.

The draft conservation plan and the draft environmental assessment consider alternatives to the proposed action, including a no action alternative. The Service prepared a draft environmental assessment to evaluate the impacts of issuing the proposed incidental take permit on the human environment, consistent with the purpose and goals of NEPA and pursuant to the Council on Environmental Quality's implementing NEPA regulations at 40 CFR parts 1500 through 1508. Additionally, the draft environmental assessment was prepared consistent with the Department of the Interior's NEPA regulations (43 CFR part 46); longstanding Federal judicial and regulatory interpretations; and Administration priorities and policies, including Secretary's Order No. 3399.

Public Availability of Comments

All comments and materials we receive will become part of the decision record associated with this action. If you submit a comment via *https://www.regulations.gov,* your entire comment, including any personal identifying information such as your address, phone number, and email address, will be posted on the website.

If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *https://www.regulations.gov.*

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500 through 1508 and 43 CFR part 46).

Scott Sobiech,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2025–01341 Filed 1–17–25; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2024–N071; FXES11130100000–234–FF01E00000]

Endangered Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation and survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before February 20, 2025.

ADDRESSES: *Document availability and comment submission:* Submit a request 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 and application number (*e.g.,* Dana Ross, ES001705):

- *Email: permitsR1ES@fws.gov.*
- *U.S. Mail:* Suzanne Nelson, Acting Regional Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Karen Colson, Regional Recovery Permit Coordinator, Ecological Services, (503) 231–6283 (telephone); *permitsR1ES@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of a species listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. 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 (CFR) 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 the requested 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
PER14302826	Sam Case, Eden Prairie, Minnesota.	*Clermontia lindseyana* ('oha wai), *Clermontia pyrularia* ('oha wai), *Cyanea shipmanii* (haha).	Hawaii	Remove/reduce to possession—collect flowers and fruits, flower manipulation, and monitor.	New.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
PER0008917	Institute for Applied Ecology, Corvallis, OR.	Taylor's checkerspot butterfly (*Euphydryas editha taylori*).	Oregon	Harass by captive propagation, transport, and release.	Amend.

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 organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit 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.*).

Jesse D'Elia,

Acting Regional Program Manager for Restoration and Endangered Species Classification, Pacific Region.

[FR Doc. 2025–01344 Filed 1–17–25; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2024–0160; FXES11140800000–256–FF08ECAR00]

Incidental Take Permit Application for the Desert Tortoise; Draft Habitat Conservation Plan and Draft Environmental Assessment; Overnight Solar Energy Project, San Bernardino County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Overnight Solar, LLC for an incidental take permit under the Endangered Species Act. The permit would authorize take of the federally threatened desert tortoise (*Gopherus agassizii*) incidental to otherwise lawful activities associated with construction, operation, maintenance, and decommissioning of the Overnight Solar Energy Project. We invite comments on the applicant's draft habitat conservation plan and the draft environmental assessment, which we have prepared pursuant to the National Environmental Policy Act. We will take comments into consideration before deciding whether to issue an incidental take permit.

DATES: *Submitting Comments:* We must receive any written comments on or before February 20, 2025.

ADDRESSES: *Obtaining Documents:* The application, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–R8–ES–2024–0160.

Submitting Written Comments: You may submit your written comments using one of the following methods:

- *Online: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2024–0160.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2024–0160; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Richard Tung, Fish and Wildlife Biologist, by email at *richard_tung@fws.gov* or via phone at 760–322–2070. 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 have received an application from Overnight Solar, LLC (applicant) for an incidental take permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the potential take of the federally threatened desert tortoise (*Gopherus agassizii*), incidental to otherwise lawful activities at the Overnight Solar Energy Project (project), as described in the applicant's draft habitat conservation plan. The proposed project would be located north of the town of Hinkley in San Bernardino County, California.

Background

Section 9 of the ESA (16 U.S.C. 1538) and Federal regulations promulgated pursuant to section 4(d) of the ESA (16 U.S.C. 1533) prohibit the take of endangered and threatened animals without special exemption. Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for endangered and threatened species are set forth in title 50 of the Code of Federal Regulations (CFR) at part 17, sections 17.22 and 17.32.

The National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requires Federal agencies to analyze their proposed actions to determine whether the actions may significantly affect the human environment. In the NEPA analysis, the Federal agency will identify the effects, as well as possible mitigation for effects on environmental resources, that could occur with the implementation of the proposed action and alternatives. The Federal action in this case is the Service's proposed issuance of an incidental take permit for the federally threatened desert tortoise.

Permit Application

The applicant has submitted a draft habitat conservation plan that describes the activities proposed to be covered by the permit, such as the construction of a solar field. To minimize the risk of incidental take, the applicant would employ qualified biologists to translocate desert tortoises to a safe location off site. To mitigate the impact of the incidental take, the applicant proposes to fund the preservation of desert tortoise habitat through new acquisition of suitable habitat or purchase of applicable mitigation credits from a Service approved mitigation bank.

The draft conservation plan and the draft environmental assessment

consider alternatives to the proposed action, including a no action alternative.

The Service prepared a draft environmental assessment to evaluate the impacts of issuing the proposed incidental take permit on the human environment, consistent with the purpose and goals of NEPA and pursuant to the Council on Environmental Quality's implementing NEPA regulations at 40 CFR parts 1500 through 1508. Additionally, the draft environmental assessment was prepared consistent with the Department of the Interior NEPA regulations (43 CFR part 46); longstanding Federal judicial and regulatory interpretations; and Administration priorities and policies, including Secretary's Order No. 3399.

Public Comments

If you wish to comment on the draft conservation plan and draft environmental assessment, you may submit comments by one of the methods in ADDRESSES.

Public Availability of Comments

All comments and materials we receive in response to this request will become part of the decision record associated with this action.

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website.

If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, 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 hardcopy document to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500 through 1508 and 43 CFR part 46).

Scott Sobiech,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2025–01340 Filed 1–17–25; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX20EG31DW50100; OMB Control Number 1028–0129]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Hydrography Addressing Tool

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the U.S. Geological Survey (USGS) is proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before February 20, 2025.

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 request (ICR) by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192: or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0129 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Michael Tinker by email at *mdtinker@usgs.gov* or by telephone at 303–202–4476. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on October 1, 2024, 89 FR 79945. No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: This 30-day notice is a renewal, with revisions, for the Hydrography Addressing Tool (HydroAdd), a website developed by the USGS National Geospatial Program, National Geospatial Technical Operations Center (NGTOC).

HydroAdd supports users by providing a mechanism for *addressing* (or referencing) diverse external datasets to the National Hydrography Dataset (NHD). For example, a user can utilize HydroAdd to reference the geographic locations of field observations of fish presence to the NHD. HydroAdd provides a framework for the

management of addressed data and enables upstream and down-stream analyses within the context of the stream network. Any type of information can be addressed to the stream network, making this tool highly useful for a broad range of purposes that benefit the Nation.

HydroAdd users are members of the public, and include State, local, private sector, academic, or other users with a basic knowledge of GIS. To use HydroAdd, users must first share their geospatial data as a hosted web feature service from ArcGIS Online. HydroAdd displays the user's data as a web feature service in the browser window. Users can then utilize HydroAdd to address their data to the NHD. Note that HydroAdd does not allow users to edit the NHD. Users are strictly limited to editing their own data.

The information collection request is the user registration. Users must register at the HydroAdd website. When registering, users are required to fill out a profile with a username and email contact. This information is stored in the application database.

Modifications to improve the HydroAdd tool are currently in development. The modifications were necessary (a) to allow HydroAdd to use the latest hydrography product from the USGS 3D Hydrography Program (3DHP); (b) to implement an open-source hosting service for user data (GeoServer), rather than ArcGIS Online; (c) to authenticate users with login.gov rather than ArcGIS.com or DOI; (d) to update some of the underlying logic to speed GIS processing, and (e) to update the name of the tool to HydroAdd3d. These modifications do not affect the information collection.

Title of Collection: Hydrography Addressing Tool.

OMB Control Number: 1028–0129.

Form Number: NA.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: 100.

Total Estimated Number of Annual Respondents: 100.

Total Estimated Number of Annual Responses: 100.

Estimated Completion Time per Response: 1 minute.

Total Estimated Number of Annual Burden Hours: 1-2/3 hour.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time, or as needed if respondent business contact information changes.

Total Estimated Annual Nonhour Burden Cost: None.

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 PRA of 1995 (44 U.S.C. 3501 *et seq.*).

Ray Postolovski,

Deputy Associate for Operations, National Geospatial Technical Operations Center.

[FR Doc. 2025–01241 Filed 1–17–25; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CONC–39199; PPWOBSADC0, PPMVSCS1Y.Y00000]

Notice of Intent To Extend Concession Contracts at Yellowstone National Park

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Under the terms of its regulations and the applicable concession contracts, the National Park Service (NPS) notifies the public that it intends to extend each concession contract listed in the table below. NPS will extend the contracts until the date shown in the ''Extension Expiration Date'' column or until the effective date of a new contract, whichever comes first.

DATES: NPS intends that the concession contract extensions will be effective on the dates shown in the table below, as applicable.

FOR FURTHER INFORMATION CONTACT: Kurt Rausch, Program Chief, Commercial Services Program, National Park Service, 1849 C Street NW, Mail Stop 2410, Washington, DC 20240; telephone: 202–513–7156.

SUPPLEMENTARY INFORMATION: Under 36 CFR 51.23, NPS proposes to extend each contract listed in the table below until the date shown in the ''Extension Expiration Date'' column or until the effective date of a new contract, whichever comes first. NPS has determined that the proposed extensions are necessary to avoid an interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such an interruption. The extension of the existing contracts does not confer or affect any rights with respect to the award of new contracts.

The publication of this notice reflects NPS's intent but does not bind NPS to extend any of the contracts listed below.

TABLE—CONCESSION CONTRACTS EXTENDED UNTIL THE EXPIRATION DATE SHOWN OR UNTIL THE EFFECTIVE DATE OF A NEW CONTRACT, WHICHEVER COMES FIRST

Park unit	CONCID	Concessioner	Extension effective date	Extension expiration date
Yellowstone NP	YELL500–14	Arden Bailey	7/1/2025	6/30/2026
Yellowstone NP	YELL501–14	Three Bear Rentals, LLC	7/1/2025	6/30/2026
Yellowstone NP	YELL502–14	Three Bear Rentals, LLC	7/1/2025	6/30/2026
Yellowstone NP	YELL503–14	DNC Parks & Resorts Yellowstone Adventures, Inc	7/1/2025	6/30/2026
Yellowstone NP	YELL504–14	Back Country Adventures Inc	7/1/2025	6/30/2026
Yellowstone NP	YELL505–14	DNC Parks & Resorts Yellowstone Adventures, Inc	7/1/2025	6/30/2026
Yellowstone NP	YELL506–14	DNC Parks & Resorts Yellowstone Adventures, Inc	7/1/2025	6/30/2026
Yellowstone NP	YELL507–14	DNC Parks & Resorts Yellowstone Adventures, Inc	7/1/2025	6/30/2026
Yellowstone NP	YELL508–14	DNC Parks & Resorts Yellowstone Adventures, Inc	7/1/2025	6/30/2026
Yellowstone NP	YELL509–14	DNC Parks & Resorts Yellowstone Adventures, Inc	7/1/2025	6/30/2026
Yellowstone NP	YELL510–14	DNC Parks & Resorts Yellowstone Adventures, Inc	7/1/2025	6/30/2026
Yellowstone NP	YELL511–14	DNC Parks & Resorts Yellowstone Adventures, Inc	7/1/2025	6/30/2026
Yellowstone NP	YELL512–14	ARAMARK Sports and Entertainment Services, LLC	7/1/2025	6/30/2026
Yellowstone NP	YELL513–14	ARAMARK Sports and Entertainment Services, LLC	7/1/2025	6/30/2026
Yellowstone NP	YELL514–14	ARAMARK Sports and Entertainment Services, LLC	7/1/2025	6/30/2026
Yellowstone NP	YELL515–14	ARAMARK Sports and Entertainment Services, LLC	7/1/2025	6/30/2026
Yellowstone NP	YELL516–14	ARAMARK Sports and Entertainment Services, LLC	7/1/2025	6/30/2026
Yellowstone NP	YELL517–14	ARAMARK Sports and Entertainment Services, LLC	7/1/2025	6/30/2026

TABLE—CONCESSION CONTRACTS EXTENDED UNTIL THE EXPIRATION DATE SHOWN OR UNTIL THE EFFECTIVE DATE OF A NEW CONTRACT, WHICHEVER COMES FIRST—Continued

Park unit	CONCID	Concessioner	Extension effective date	Extension expiration date
Yellowstone NP	YELL518–14	ARAMARK Sports and Entertainment Services, LLC ..	7/1/2025	6/30/2026
Yellowstone NP	YELL519–14	Teton Science Schools, Inc	7/1/2025	6/30/2026
Yellowstone NP	YELL520–14	Teton Science Schools, Inc	7/1/2025	6/30/2026
Yellowstone NP	YELL522–14	Gary Fales Outfitting, Inc	7/1/2025	6/30/2026
Yellowstone NP	YELL523–14	DNC Parks & Resorts Yellowstone Adventures, Inc	7/1/2025	6/30/2026

Justin Unger,

Associate Director, Business Services.

[FR Doc. 2025–01240 Filed 1–17–25; 8:45 am]

BILLING CODE 4312–53–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1365]

Certain Photovoltaic Connectors and Components Thereof; Notice of a Commission Final Determination Finding no Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to reverse in part a final initial determination (''FID'') issued by the presiding administrative law judge (''ALJ'') finding a violation of section 337 of the Tariff Act of 1930, as amended. The investigation is terminated with a finding of no violation.

FOR FURTHER INFORMATION CONTACT: Paul Lall, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2043. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On June 9, 2023, the Commission instituted this investigation based on a complaint filed on behalf of Shoals Technologies Group, LLC (''Shoals Technologies'') of Portland, Tennessee. 88 FR 37905–06 (June 9, 2023). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based upon the importation into the United States, the sale for importation, or sale within the United States after importation of certain photovoltaic connectors and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,553,739 (''the '739 patent'') and 10,992,254 (''the '254 patent''). The Commission's notice of investigation (''NOI'') named the following eight respondents: (1) Hikam America, Inc. of Chula Vista, California; (2) Hikam Electrónica de México, S.A. de C.V. of Mexicali, Mexico; (3) Hikam Tecnologia de Sinaloa of Guasave, Mexico; (4) Hewtech Philippines Corp. of Laguna, Philippines; (5) Hewtech Philippines Electronics Corp. of Pampanga, Philippines; (6) Hewtech (Shenzhen) Electronics Co., Ltd. of Shenzhen, China (collectively the ''Hikam Respondents''); (7) Voltage, LLC (''Voltage'') of Chapel Hill, North Carolina; and (8) Ningbo Voltage Smart Production Co. (''Ningbo Voltage'') of Ningbo, China (collectively ''Respondents''). *Id.* The Office of Unfair Import Investigations (''OUII'') was also named as a party in this investigation. *Id.* at 37906.

On August 15, 2023, the Commission amended the complaint and NOI to add allegations of infringement against Voltage related to certain claims of U.S. Patent No. 11,689,153 (''the '153 patent''). *See* Order No. 5 (Jul. 18, 2023), *unreviewed by* Comm'n Notice, 88 FR 56882–83 (Aug. 21, 2023).

The presiding ALJ held a *Markman* hearing on December 13, 2023, and on February 20, 2024, issued an order addressing claim construction for the '739, '254, and '153 patents. *See* Order No. 16 (Feb. 20, 2024) (''*Markman* Order''). On February 28, 2024, Shoals filed a motion for reconsideration of the *Markman* Order's construction of the term ''engaged with'' in claims 1 and 10 of the '739 patent. On March 4 and 5, 2024, Respondents and OUII filed oppositions to the motion, respectively.

On March 11, 2024, the Commission terminated the following claims from the investigation based on Shoals' withdrawal of the complaint as to those claims: claims 2, 3, 6, 8, 9, 11, 12, and 15–18 of the '739 patent, claims 2–4, 8–12, 14, and 15 of the '254 patent, and claims 2, 3, 6, and 15–17 of the '153 patent. *See* Order No. 15 (Feb. 9, 2024), *unreviewed by* Comm'n Notice (March 11, 2024).

On March 25, 2024, the Commission terminated the '254 patent from this investigation based on Shoals' withdrawal of the complaint as to that patent. *See* Order No. 19 (Feb. 28, 2024), *unreviewed by* Comm'n Notice (March 26, 2024).

On April 19, 2024, the Commission determined not to review the ALJ's grant of summary determination that Shoals has not satisfied the technical prong of the domestic industry requirement for the '739 Patent and, thus, found no violation as to the '739 patent. Order No. 20 (March 6, 2024), *unreviewed by* Comm'n Notice (Apr. 19, 2024). In Order No. 20, the ALJ also denied Shoals' motion for reconsideration of the *Markman* Order. *Id.* Only the '739 patent was asserted against the Hikam Respondents. *See* Comm'n Notice (Apr. 19, 2024); Am. Compl. at ¶ 66. Accordingly, the Hikam Respondents were effectively terminated from the investigation as of the termination of the '739 patent. On June 18, 2024, Shoals filed a notice of appeal with the U.S. Court of Appeals for the Federal Circuit appealing the Commission's finding of no violation as to the '739 patent. *See* Case No. 24–1991, Notice of Docketing (Fed. Cir. June 24, 2024). On December 18, 2024, the Federal Circuit issued an order dismissing the appeal based on a joint stipulation of voluntary dismissal. *See* Case No. 24–1991, Order (Fed. Cir. Dec. 18, 2024).

On April 26, 2024, the Commission terminated the investigation with respect to asserted claim 8 of the '153 patent based on Shoals' withdrawal of the complaint as to that claim. *See*

Order No. 29 (April 2, 2024), *unreviewed by* Comm'n Notice (Apr. 26, 2024).

The ALJ held an evidentiary hearing on March 18–22, 2024. As of the hearing, Shoals asserted claims 1, 11–14, 18, 21, 23, and 24 of the '153 patent against the accused Voltage Trunk Bus, and Voltage sought adjudication of the Voltage Alternative Design [''AD''] Trunk Bus with respect to and claims 21 and 24 of the '153 patent. Shoals also asserted that its DI product practices claims 1 and 21 of the '153 patent for purposes of the DI requirement.

On August 30, 2024, the presiding ALJ issued the FID, finding that there has been a violation of section 337 in the importation into the United States, the sale for importation, and/or the sale in the United States after importation of certain photovoltaic connectors and components thereof with respect to certain claims of the '153 patent. Specifically, the FID finds as to the '153 patent that: (1) the Voltage Trunk Bus and Voltage AD Trunk Bus have been imported into the United States, sold for importation, and/or sold within the United States after importation; (2) the Voltage Trunk Bus satisfies claims 1, 11–14, and 18; (3) the Voltage Trunk Bus does not satisfy claims 21, 23, and 24; (4) the Voltage AD Trunk Bus does not satisfy claims 1, 11–14, 18, 21, 23, and 24; (5) Shoals has satisfied the technical prong of the DI requirement; (6) Shoals has satisfied the economic prong of the DI requirement; and (7) Voltage has not shown that claims 1, 11–14, 18, 21, 23, and 24 are invalid under 35 U.S.C. 112 for lack of written description and/or indefiniteness.

On September 13, 2024, the presiding ALJ issued a Recommended Determination on Remedy and Bonding (''RD''). The RD recommends that the Commission issue a limited exclusion order against Voltage in the event it finds a violation of section 337 and impose a bond of 100 percent during the period of Presidential Review.

On October 15 and 16, 2024, Shoals Technologies and Voltage, respectively, filed a statement on the public interest pursuant to Commission Rule 210.50(a)(4), 19 CFR 210.50(a)(4). On October 15, 2024, Strata Clean Energy of Durham, N.C. filed a statement on the public interest in response to the Commission's **Federal Register** notice. *See* 89 FR 76869–70 (Sept. 19, 2024).

On September 16, 2024, Shoals filed a petition for review of the FID, arguing that the ALJ should not have considered respondents' redesign product, the Voltage AD Trunk Bus, as being within the scope of the investigation. On the same day, Respondents also filed a petition for review of the following of the FID's findings: (1) the FID's construction of the term ''aperture'' recited in the asserted claims of the '153 patent; (2) the FID's finding that the asserted claims of the '153 patent are not invalid under 35 U.S.C. 112 for lack of written description and/or indefiniteness; (3) the FID's finding that Shoals has satisfied the domestic industry requirement with respect to an article protected by the '153 patent; and (4) the FID's determination to exclude the testimony of Voltage's invalidity expert. Also on the same day, OUII filed a petition for review of the following of the FID's findings: (1) the FID's construction of the ''aperture'' terms; (2) the FID's finding that Shoals' has satisfied the technical prong of the domestic industry requirement; and (3) the FID's determination to exclude the testimony of Voltage's invalidity expert.

On September 24, 2024, Shoals, Voltage and OUII each filed responses to the respective petitions for review.

On October 4, 2024, Voltage filed a notice of supplemental authority, and on October 7, 2024, Shoals filed a response to the notice. The Voltage Notice attached a copy of a September 30, 2024 decision from the U.S. Patent and Trademark Office's Patent Trial and Appeal Board denying a petition by Voltage to institute post-grant review proceedings. *See* Voltage Notice, Ex. A (*Voltage* v. *Shoals,* PGR2024–00022).

On November 13, 2024, the Commission determined to review the FID in part. *See* 89 FR 91424–27 (Nov. 19, 2024) (the ''November 13, 2024 Commission Notice''). Specifically, the Commission reviewed the FID's: (1) construction of the ''aperture'' terms recited in the asserted claims of the '153 Patent; (2) finding that the accused products infringe the asserted claims of the '153 patent; (3) finding that the asserted claims of the '153 patent are not invalid under 35 U.S.C. 112 for lack of written description and/or indefiniteness; and (4) finding that Shoals has satisfied the domestic industry requirement of section 337, including the FID's findings concerning the technical prong and the economic prong. *Id.* at 91426. The Commission did not review the remaining findings in the FID.

In connection with its review, the Commission requested responses from the parties to certain question concerning the issues under review. *Id.* at 91426. The Commission also requested parties to the investigation, interested government agencies, and any other interested parties to file written submissions on the issues of remedy, the public interest, and bonding. *Id.*

On November 27, 2024, Shoals, Voltage and OUII each filed a response to the Commission's November 13, 2024 notice. On December 5, 2024, Shoals, Voltage and OUII each filed a respective reply.

Having reviewed the record of the investigation, including the FID, the parties' petitions for review and related submissions, and the parties' responses to the Commission's November 13, 2024 Notice, the Commission has determined to: (1) construe the ''aperture'' terms recited in the asserted claims of the '153 Patent such that the entire ''drop line'' recited in the claims means ''the entire length of the underlying 'drop line/wire' within the undermold (and compression lug), just as the 'feeder cable' equates to the entire length of the underlying cable within the undermold (and compression lug)''; (2) reverse the FID's finding that the accused Voltage Trunk Bus satisfies claims 1, 11–14, and 18 of the '153 patent; and (3) reverse the FID's finding that Shoals' asserted domestic industry products satisfy the limitations of claims 1 and 21 of the '153 patent. The Commission takes no position on the other issues under review. Concurrent with this notice, the Commission has issued an opinion further explaining its determination.

The investigation is terminated with a finding of no violation of section 337.

The Commission's vote on this determination took place on January 14, 2025.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.
Issued: January 14, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025–01310 Filed 1–17–25; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1384]

Certain Passive Optical Network Equipment; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on December 19, 2024, the presiding administrative law judge (''ALJ'') issued

an Initial Determination on Violation of Section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public and interested government agencies only.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically, a general exclusion order directed to certain passive optical network equipment imported, sold for importation, and/or sold after importation that infringe claims 1 and 12–14 of U.S. Patent No. 7,333,511 or claims 1 and 3 of U.S. Patent No. 7,558,260. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public and interested government agencies are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on December 19, 2024. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on February 11, 2025.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1384'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.
Issued: January 14, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025–01307 Filed 1–17–25; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. XCL Resources Holdings, LLC, Verdun Oil Company II, LLC, and EP Energy LLC; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of

Columbia in *United States of America* v. *XCL Resources Holdings, LLC, Verdun Oil Company II, LLC, and EP Energy LLC,* Civil Action No. 1:25-cv-00041. On January 7, 2025, the United States filed a Complaint alleging that XCL Resources Holdings, LLC (''XCL''), Verdun Oil Company II, LLC (''Verdun''), and EP Energy LLC (''EP Energy'') (together ''Defendants'') violated the notice and waiting period requirements of section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (''HSR Act'' or ''Act'') by transferring beneficial ownership of EP Energy to XCL and Verdun during the waiting period, which constitutes gun jumping.

The Proposed Final Judgment, filed at the same time as the Complaint, requires: (i) XCL and Verdun jointly and severally to pay a civil penalty in the amount of $2,842,188.50, and EP Energy to pay a civil penalty in the amount of $2,842,188.50 within 30 days of entry of the Final Judgment; (ii) Defendants to refrain from certain conduct as laid out in the Final Judgment; and (iii) Defendants to design, maintain, and operate a compliance program to ensure compliance with the Final Judgment and the Antitrust Laws, and certify observance of these compliance provisions to the United States within 60 days of entry of the Final Judgment.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments in English should be directed to Maribeth Petrizzi, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW, CC–8416, Washington, DC 20580 or by email to *bccompliance@ftc.gov.*

Suzanne Morris,

Deputy Director of Civil Enforcement Operations.

United States District Court for the District of Columbia

United States of America, c/o Department of Justice, Washington, DC 20530 Plaintiff, v. *XCL RESOURCES HOLDINGS, LLC, 600 N. Shepherd Drive, Suite 390, Houston, TX 77007; VERDUN OIL COMPANY II LLC, 945 Bunker Hill Road, Suite 1300, Houston, TX 77024 and EP ENERGY LLC, 945 Bunker Hill Road, Suite 100, Houston, TX 77024* Defendants. Civil Action No. 1:25-cv-00041.

Complaint for Civil Penalties and Equitable Relief for Violations of the Hart–Scott–Rodino Act

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action for equitable and monetary relief in the form of civil penalties against the Defendants XCL Resources Holdings, LLC (''XCL''),Verdun Oil Company II, LLC (''Verdun''), and EP Energy LLC (''EP''), and alleges:

Nature of the Action

1. This case involves violations of federal antitrust obligations under Section 7A of the Clayton Act, 15 U.S.C. 18A, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (''HSR Act''). Under the HSR Act, both parties must make a pre-merger notification filing to the federal antitrust agencies and observe the corresponding waiting-period obligations before transferring any ownership or control of the to-be-acquired business to the acquirer. This waiting period ensures that the parties to a proposed transaction remain as separate, independent entities during the pendency of the antitrust review. This suspensory waiting period allows the enforcement agencies the opportunity to investigate the transaction and, where applicable, pursue an enforcement action, before consolidation of the businesses and assets occurs.

2. In this matter, Verdun and EP entered a proposed transaction that was subject to the HSR Act's notification and waiting-period requirements, and each Defendant made the required pre-merger notification filing with the antitrust agencies. The Defendants failed, however, to satisfy their waiting-period obligations. Instead, upon executing the transaction agreement, EP allowed Verdun and its sister company, XCL, to assume operational and decision-making control over significant aspects of EP's day-to-day business operations. This was no mere technical violation; the Defendants' conduct effectively allowed one competitor to acquire beneficial ownership, including control over key competitive decisions of the other, before the transaction closed, which is precisely what the HSR Act prohibits.

3. Pursuant to a Membership Interest Purchase Agreement dated July 26, 2021 (''Purchase Agreement''), Verdun agreed to acquire EP, a company engaged in crude oil production in the Uinta Basin area of Utah and in the Eagle Ford area of Texas. Verdun is under common management with XCL, and both companies are engaged in crude oil production: Verdun in the Eagle Ford area and XCL in the Uinta Basin. The purchase price for the proposed transaction was approximately $1.4 billion. As part of the transaction, EP's operations in the Uinta Basin were to be transferred to XCL, and XCL would pay the portion of the purchase price attributed to the Uinta Basin assets.

4. The proposed transaction triggered a filing obligation under the HSR Act. As such, the Defendants were required to make premerger notification filings with the Federal Trade Commission (''FTC'') and Department of Justice and to observe the prescribed waiting periods before transferring ownership of EP to XCL and Verdun. The Defendants' parent entities made premerger notification filings for the Defendants' proposed transaction as required by the HSR Act. After receiving the premerger notification filings, the FTC investigated the proposed transaction and ultimately obtained a consent agreement addressing the FTC's concerns about the impact of the transaction on competition in the market for the development, production, and sale of waxy crude oil in the Uinta Basin area of Utah. The consent agreement was entered on March 25, 2022, and required the Defendants to divest all of EP's Utah operations to a qualified third-party operator, Crescent Energy, to remedy the potential lessening of competition in the alleged crude oil market.

5. The HSR Act's waiting-period obligation for this transaction went into effect on July 26, 2021, the date the Defendants executed the Purchase Agreement, and continued through March 25, 2022, the date the FTC accepted the consent agreement and granted termination of the waiting period.

6. For a portion of this waiting period, however, the Defendants disregarded their obligations under the HSR Act and

transferred significant operational control over EP's ordinary-course business to XCL and Verdun. This conduct violates the HSR Act and is often referred to as ''gun jumping'' or a ''gun-jumping violation.''

7. Specifically, the Purchase Agreement provided for the immediate transfer of control over key aspects of EP's business to XCL and Verdun, including granting XCL and Verdun approval rights over EP's ongoing and planned crude oil development and production activities and many of EP's ordinary-course expenditures. Once the Purchase Agreement was signed, by virtue of these approval rights, XCL and Verdun quickly began gun jumping by exercising operating control over significant aspects of EP's business. Indeed, XCL put an immediate halt to EP's new well-drilling activities, so that XCL—not EP—could control the development and production plans for EP's drilling assets moving forward. XCL halted EP's new oil-drilling activities for several weeks, from approximately July 26, 2021, to approximately August 16, 2021. On approximately August 17, 2021, after the Defendants realized that the FTC would investigate the transaction, XCL and Verdun allowed EP to resume its own well-drilling and planning activities.

8. The Defendants' unlawful gun jumping allowed competitors to coordinate their activities. Among other things, XCL's temporary halting of EP's development activities contributed to EP having crude oil supply shortages in September and October 2021 at a time when the United States was experiencing significant supply shortages and spiking crude oil prices due to sudden demand increases as COVID–19 restrictions eased. The Defendants anticipated EP's potential supply shortages while negotiating the Purchase Agreement, which specifically provided that XCL and Verdun—not EP—would bear all costs associated with EP's supply shortages. XCL and EP—direct competitors in the marketplace—then worked in concert to supply EP's customers in satisfaction of EP's customer supply commitments. During this period, EP employees effectively reported to their XCL counterparts and provided XCL employees with details on customer contracts, supply volumes, and pricing terms. XCL employees also coordinated directly with EP's customers to discuss EP's supply shortage and to arrange for alternative delivery to the customer, which XCL made either from its own supplies or from purchases it made on the spot market, to fulfill EP's contractual commitments to the customers. EP's customers began contacting XCL directly—sometimes excluding EP altogether—to discuss EP's supply and delivery commitments to each customer under the relevant EP supply contract.

9. The Purchase Agreement also required EP to submit all expenditures above $250,000 for XCL's or Verdun's review and approval. These approval requirements applied to many of EP's ordinary-course expenditures, and effectively transferred control over a significant portion of EP's day-to-day operations to XCL and Verdun. Further, XCL and Verdun received and approved expenditure requests from EP falling well below the $250,000 threshold outlined in the Purchase Agreement.

10. XCL also required changes to certain of EP's ordinary-course business operations, such as EP's well-drilling designs and its leasing and renewal activities. EP also gave XCL almost-unfettered access to EP's competitively sensitive business information—including EP's site design plans, customer contract and pricing information, and daily supply and production reports—in the months after the parties signed the Purchase Agreement.

11. Verdun also coordinated with EP on EP's contract negotiations with certain customers in the Eagle Ford production area. Specifically, Verdun observed that certain EP contracts included below-market prices and directed EP to raise them in the next contracting period. EP complied.

12. The illegal conduct detailed above lasted through October 27, 2021, when the Defendants executed an amendment to the Purchase Agreement, which allowed EP to operate independently once again and in the ordinary course of business, without XCL's or Verdun's control over its day-to-day operations. Around this time, XCL and Verdun and EP also stopped coordinating on customer supply and pricing and ceased exchanging competitively sensitive information.

13. The Defendants' transfer of operational control over key aspects of EP's business to XCL and Verdun during the HSR waiting period was a transfer of beneficial ownership that constitutes a gun-jumping violation of the HSR Act. The Defendants were in violation of the HSR Act from when the Purchase Agreement was signed, on July 26, 2021, until the Purchase Agreement was amended, on October 27, 2021, a period of 94 days.

Jurisdiction, Venue, and Interstate Commerce

14. The United States brings this action under Section 7A of the Clayton Act, 15 U.S.C. 18a, to recover civil penalties for the violation of the HSR Act.

15. This Court has jurisdiction over the subject matter of this action under Section 7A(g) of the Clayton Act, 15 U.S.C. 18a(g), and under 28 U.S.C. 1331, 1337(a), 1345, and 1355.

16. The Defendants are engaged in—and their activities described herein substantially affected—interstate commerce.

17. The Defendants have consented to the personal jurisdiction and venue in the District of Columbia for purposes of this action.

The Defendants

18. Defendant XCL Resources Holdings, LLC is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business at 600 N. Shephard Drive, Suite 390 in Houston, Texas.

19. Defendant Verdun Oil Company II, LLC is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of the State of Texas, with its office and principal place of business at 945 Bunker Hill Road, Suite 1300 in Houston, Texas.

20. Defendant EP Energy LLC is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business at 945 Bunker Hill Road, Suite 100 in Houston, Texas.

21. All Defendants are engaged, among other things, in the development, production, and sale of crude oil in the United States.

The HSR Act and Rules

22. The HSR Act requires certain acquiring persons, and certain persons whose voting securities or assets are acquired, to file notifications with the Department of Justice and the FTC (collectively, the ''federal antitrust agencies'') and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. 18a(a) and (b). Of relevance here, the notice and waiting requirements apply if, as a result of the acquisition, the acquiring person will ''hold'' assets or voting securities above the HSR Act's size of transaction threshold (which was $368.0 million at all times relevant to this complaint).

23. Under the HSR Act, the FTC promulgated rules defining relevant terms and specifying what information must be included in the required notification. 16 CFR 801–803. The rules define ''hold'' to mean ''beneficial ownership, whether direct, or indirect through fiduciaries, agents, controlled entities or other means.'' 16 CFR 801.1(c). While the existence of beneficial ownership will depend on the facts in a particular case, practical indicia include controlling ordinary-course business decisions, assuming or rejecting contractual obligations, obtaining competitively sensitive information, and partaking in financial gains and losses.

24. Through the HSR Act, Congress intended to provide the federal antitrust agencies prior notice of, and information about, proposed transactions. The HSR Act created a process for premerger notification and investigation that does not require assessing beforehand whether the proposed transaction is anticompetitive or illegal under the antitrust laws. Congress created a suspensory waiting period to provide the federal antitrust agencies with the opportunity to investigate a proposed transaction and to determine whether to seek an injunction to prevent its consummation if the investigation shows that the proposed transaction may violate the antitrust laws. Gun-jumping violations deprive the enforcement agencies of this opportunity to investigate a transaction and seek an injunction before a transaction is completed, after which it may be difficult to completely restore competition and the acquired company to their pre-transaction states.

The Purchase Agreement

25. Pursuant to the Purchase Agreement, XCL and Verdun agreed to acquire EP for $1.445 billion, with possible adjustments for specified conditions. XCL and Verdun each contributed more than $368 million of the purchase price, triggering notice and waiting requirements under the HSR Act for both companies.

26. XCL and Verdun's bid to acquire EP's business was contingent on XCL and Verdun securing immediate approval rights over EP's ordinary-course development activities; the Defendants memorialized these rights in the Purchase Agreement they signed. As XCL executives noted during the Purchase Agreement negotiations, ''[XCL's parent] is providing a deposit that more than offsets potential damages from 60 days of delayed production and initial operation planning, we moved materially on price and included this term in our initial offer sheet, we are unable to move off this point.'' (emphasis in original).

27. The Purchase Agreement restricted EP's discretion to conduct its ordinary-course business activities during the period between the signing of the Purchase Agreement and the closing of the transaction, a period that included the full duration of the HSR Act's applicable waiting period.

28. For example, EP committed ''not to propose, agree to, or commence any individual operation on the Assets anticipated to cost in excess of Two Hundred Fifty Thousand ($250,000),'' unless XCL or Verdun first expressly approved the activity, without any exception for ordinary-course transactions.

29. Further, for the numerous crude oil wells EP was developing, EP would ''not conduct any operation in connection with'' those plans ''unless such operations are expressly permitted pursuant to'' the Purchase Agreement ''or are otherwise approved by Purchaser.''

30. The Purchase Agreement thus prevented EP from continuing with its crude oil well-development activities without XCL's or Verdun's approval, giving XCL and Verdun control to stop or delay EP from moving forward with its production plans in the normal course of its business.

31. XCL or Verdun had ''sole discretion'' whether to approve any actions that were otherwise prohibited by the Purchase Agreement, and the Purchase Agreement set forth procedures for granting XCL's or Verdun's approval.

32. In short, these contractual provisions allowed one competitor to control the other's ordinary-course business activities relating to crude oil production before the transaction closed—a paradigmatic case of gun jumping through transfer of beneficial ownership. All this occurred during a time when the U.S. market as a whole was facing significant supply shortages and multi-year highs in oil prices, resulting in Americans paying skyrocketing prices at the pump.

33. The parties also agreed to shift to XCL and Verdun the financial risk for certain EP business activity, which constitutes further evidence of gun jumping. The Defendants anticipated that the Purchase Agreement restrictions on EP's activities would result in crude supply shortages for EP and its customers in the ensuing months and could cause EP to breach existing obligations. The Purchase Agreement therefore required XCL and Verdun to bear all financial risk and liabilities associated with these provisions and shifted to XCL and Verdun the financial ramifications of these changes and delays to EP's development activities. The Purchase Agreement provided that ''failure of Purchaser to approve such matters shall obligate Purchaser to bear all risk and liability for any breach or non-compliance under the Assets as a result of Purchaser's acts or omissions with respect to such failure to approve.''

34. The Purchase Agreement was eventually amended on October 27, 2021. Among other things, the amendment effectively allowed EP to resume its well-development activities in the ordinary course of business without requiring XCL's or Verdun's consent.

The Defendants' Unlawful Conduct Following the Merger Agreement

35. This matter presents a straightforward example of unlawful gun jumping where two companies agree to coordinate their activities before a transaction is permitted to close under the HSR Act. The Purchase Agreement created the contractual obligation for EP to transfer operating control over key portions of its crude oil production business to XCL and Verdun, and the Defendants' actions in the weeks and months after they executed the Purchase Agreement demonstrated that such a transfer of control from EP to XCL and Verdun did indeed take place. XCL and Verdun thus gained beneficial ownership of EP's assets in direct violation of the HSR Act's waiting period requirements.

XCL Required Ep To Suspend its Well-Completion Activities

36. The Defendants' actions abruptly halted EP's crude oil development activities. Indeed, upon signing the Purchase Agreement, XCL immediately stopped EP's ordinary-course well-drilling design and planning activities in Utah. XCL did this so that it—not EP—could take over the management of EP's development plans and designs moving forward.

37. An email sent the afternoon the Purchase Agreement was signed on July 26, 2021, from an EP executive to his counterparts at XCL, illustrates the Defendants' intentions to transfer operational control of EP to XCL and Verdun: ''Congratulations on getting the Purchase Agreement signed and deposit sent! Now we can move forward with your requested changes. Please confirm that you approve the following: Shut down all currently planned fracs until after the close. Per the attached spreadsheet, by shutting down these fracs we have sold more oil than we will

be able to deliver and XCL accepts the contractual and reputational ramifications of not delivering these barrels.''

38. XCL responded in the affirmative. ''*XCL Confirmations of EP Operational Changes* . . . . We confirm the request to suspend any operations related to completions between sign to close.'' (emphasis in original).

39. In the days after the Defendants signed the Purchase Agreement, XCL employees began actively supervising EP's well-design and planning activities, including by requiring changes to EP's site design plans and vendor-selection process. XCL employed a ''boots on the ground'' approach to taking over EP's operations and design planning, with EP employees effectively reporting to their XCL counterparts.

40. For instance, in an August 2, 2021, email from an XCL Vice-President to EP's Chief Operating Officer, the XCL executive states: ''Thanks for taking my call today, and working through operational planning with us. As discussed, we would like to complete the Moose Hollow and Bluebell wells as a combined team, where XCL leads on frac design and vendor selection, and EP teams with XCL to execute the operations.''

41. The Defendants understood that XCL's halting of EP's ordinary-course well-development projects would lead to, or contribute to, production shortfalls for EP and its customers in following months, given the delay in EP's ability to drill the new wells. In exchange, XCL agreed to assume the contractual and reputational ramifications of these shortfalls.

42. The stoppages to EP's ordinary-course well-drilling activities lasted for several weeks—until approximately August 17, 2021—and ended only after the Defendants realized that the FTC would conduct a full investigation into the competitive effects of their transaction. At that point, XCL allowed EP to resume its well-drilling activities—though EP would continue to seek XCL's review and approval for its plans and related expenditures, as required by the Purchase Agreement.

XCL Coordinated With EP on EP's Customer Contracts, Customer Relationships, and Customer Deliveries

43. The Defendants' unlawful gun jumping delayed introduction of increased supply in the market. EP faced supply shortages in the Uinta Basin in the months of September and October 2021 due to XCL halting EP's well-completion activities in the weeks following the Purchase Agreement signing. XCL and EP discussed the shortages and XCL's resulting financial obligation during the subsequent months. For instance, in an October 2021, email exchange between EP and XCL, an EP employee wrote, ''However, as XCL has been directing EP Energy's completions and has agreed to fulfill EP Energy's contractual commitments between sign and close any shortfall [in EP's ability to fulfil its supply commitments] would be due to XCL's decisions.''

44. To this end, XCL began conferring and coordinating with EP about EP's production volumes, customer contracts, and supply obligations.

45. XCL requested and received from EP detailed information about EP's actual and projected production volumes, delivery capabilities, and customer supply obligations—including details about the customers' contracted volumes and pricing terms.

46. XCL then proceeded to coordinate with EP to manage and direct EP's fulfillment of its contractual obligations to its customers, with XCL covering the volume shortages under EP's customer agreements.

47. XCL also engaged directly with EP's customers about EP's supply and delivery obligations, providing EP's customers with detailed information about EP's volume projections, supply shortages, and ability to meet its supply obligations in current and future periods.

48. XCL held itself out to EP's customers, in words or substance, as coordinating EP's supply and deliveries in the Uinta Basin, and EP's customers began contacting XCL directly about their EP contracts, EP's volume projections, and the delivery schedules pursuant to the contracts.

49. For example, in an email exchange between an EP customer and XCL from September 2021, the EP customer asks XCL to confirm EP's supply forecast: ''It was good catching up with you this week. Below is the forecast from EP Energy. Let me know if you think they'll actually have these contracted volumes for October or if we'll need to do another spot deal similar to September.'' The XCL employee responded, ''I do not have an updated EP forecast for October yet but am told it will come in the next day or two. Once that's in hand we'll be able to build a plan for October.''

50. Another example, from August 2021, shows an exchange between XCL and a different EP customer, where the EP customer asks XCL to provide EP's volume forecast for the following month: ''Just wondering if you have a feel yet for what Sept will look like (EP volume)? Also, just to confirm, we're good with the contract volumes for Q4, correct?'' The XCL employee responds, ''I do have a feel for sept, we have a planning meeting in the AM to finalize, but directionally looking better than planned. Potentially no cuts, probably more likely in the 500bpd range, but will definitely get you a communication on that tomorrow once I get confirmation. As for Q4, that too is still a little up in the air as we finalize the development plan and I'll share more as soon as I can. We are planning on moving things forward to fill commitments in full, just again needing to confirm all of that.''

51. XCL coordinated with EP and EP's customers regarding EP's supply and delivery volumes from approximately August 2021 through approximately October 2021. This coordination ended by November 2021, when XCL began informing EP's customers that XCL and EP needed to operate as independent companies for the remainder of the pre-merger period and that, as a result, XCL would no longer be covering EP's volume shortfalls.

XCL's and Verdun's Approvals Were Required for EP To Conduct Ordinary-Course Business Activities and To Make Ordinary-Course Expenditures; XCL and Verdun Required EP To Make Changes to its Operations

52. In addition to exercising their approval rights over EP's well-drilling activities, XCL and Verdun exercised their rights under the Purchase Agreement to review and approve other of EP's ordinary-course expenditures and business activities.

53. Under the Purchase Agreement, EP needed to secure XCL's or Verdun's approval before making expenditures above $250,000, which is a relatively low threshold in the crude development and production business. As a result, XCL or Verdun approval was required before EP could perform a range of ordinary-course activities needed to conduct its business, including, *e.g.,* purchasing supplies for its drilling operations and entering or extending contracts for drilling rigs.

54. In practice, EP sought and received approval for ordinary-course expenditures below the low levels established through the Purchase Agreement. These included approvals to purchase gauges and other pre-drilling expenses.

55. On top of submitting its expenditures for approval, under the Purchase Agreement, EP also needed to secure XCL's or Verdun's approval for other basic activities, such as hiring field-level employees and contractors necessary to conduct its drilling and production operations in the ordinary

course of business. Pursuant to these requirements, EP submitted its ordinary-course hiring proposals to XCL and Verdun for approval.

56. XCL and Verdun also required EP to make changes to aspects of its business plans and day-to-day operations. These included changes to EP's well-drilling and site design plans, modifications to the areas in Utah and Texas where EP could pursue leasing and renewal activities, changes regarding EP's selection of vendors, and instructions not to pursue development opportunities that EP had been exploring in the ordinary course of business.

Verdun and EP Coordinated Regarding Prices for EP's Customers in the Eagle Ford Region of Texas

57. The Defendants' gun-jumping activity also included coordination of prices. In the Eagle Ford region of Texas, employees from Verdun and EP coordinated on pricing terms that EP would offer to its customers. EP shared its competitively sensitive information on customer pricing and supply volumes with Verdun, and then sought Verdun's approval of the prices it negotiated with the customers.

58. On July 28, 2021, shortly after the Purchase Agreement was signed, a Verdun employee with responsibility for sales and marketing contacted his EP counterpart to discuss EP's customer pricing and contract terms. The Verdun employee used information he had obtained from the virtual data room set up by EP as part of the sale process to suggest changes to EP's customer pricing. An EP employee responded and continued to consult with the Verdun employee as she was negotiating with the customers. Ultimately, the EP employee sought and obtained the approval of the Verdun employee for the new contracts with EP's customers.

EP Exchanged Competitively Sensitive Information With XCL and Verdun Without Adequate Safeguards To Limit Access Or Prevent Misuse

59. The Defendants' gun jumping also facilitated the exchange of confidential and granular business information far beyond anything necessary for transaction due diligence. Upon signing the Purchase Agreement, XCL and Verdun asked for, and received, competitively sensitive information about EP's business operations and customers in Utah and Texas. This information included details on EP's customer contracts, customer pricing, production volumes, customer dispatches, business plans, site designs, vendor relationships and contracts, permitting and surveying information, and other competitively sensitive, nonpublic information. EP provided some of this information to XCL and Verdun on a daily or weekly basis.

60. EP took no meaningful steps to resist these requests from XCL and Verdun. Instead, EP agreed to provide XCL and Verdun employees with access to its competitively sensitive information in the pre-merger period, even though EP competed directly with both XCL and Verdun and the information exchange lacked any legitimate business purposes. Further, EP made no effort—and XCL and Verdun offered no protections on its own—to limit the access to, or use of, EP's competitively sensitive information by XCL's and Verdun's employees.

61. In the days following execution of the Purchase Agreement, XCL and Verdun requested and received access to EP daily operating reports, including reports on EP's crude production, dispatches by customers, and oil sales and loads by counterparty. These materials were provided to several XCL and Verdun businesspeople responsible for sales, marketing, and operations.

62. These daily reports provided the employees of XCL and Verdun with virtually real-time information about EP's operations, output, and sales. To illustrate, in an August 4, 2021, email from EP's Chief Operating Officer to a number of XCL and Verdun employees—including the CEO and head of operations for both XCL and Verdun—the EP executive writes, ''You will start receiving the attached Operations Report daily. This report covers drilling, completions, workovers and production.''

63. XCL also requested and received weekly updates on EP's permits and sundries, spacing orders, and ongoing regulatory work, as well as access to EP's site survey logs, geologic reports, geosteering reports, software communication systems, and various other datasets.

64. Beyond regular reports and updates, XCL and Verdun employees requested and received information on an ad hoc basis on EP's development plans, contracts, customers, projections, deliveries, and seemingly any other aspect of EP's business or operations of interest to XCL and Verdun business employees.

65. The Defendants had no legitimate business purposes for exchanging and disseminating EP's competitively sensitive business information in the pre-merger period and failed to place limits as to who at XCL and Verdun could access the information or how that information could be used.

66. Even information provided by EP to XCL and Verdun through the virtual data room—ostensibly for the legitimate purpose of conducting due diligence on the proposed transaction—lacked appropriate safeguards on access and use.

67. Some of EP's confidential information from the due diligence data room was used by Verdun's operations and sales employees to inform pricing and contract terms in the pre-merger period when Verdun and EP were still competitors in the marketplace. As noted in Paragraph 58 of this complaint, a Verdun employee used information from the virtual data room to discuss with his counterpart at EP prices for EP's customers.

68. The information flow from EP to XCL and Verdun continued in full force through approximately October 2021.

Cause of Action Violation of Section 7A of the Clayton Act

69. Plaintiff alleges and incorporates paragraphs 1 through 68 as if set forth fully herein.

70. XCL and Verdun's acquisition of EP was subject to Section 7A premerger notification and waiting-period requirements.

71. XCL and Verdun substituted their business interests and judgment for those of EP and exercised operational control over key aspects of EP's business before expiration of the waiting period in violation of Section 7A.

72. By controlling EP's business operations after having agreed to acquire EP, XCL and Verdun acquired beneficial ownership of EP's assets and thus acquired and held those assets within the meaning of Section 7A.

73. The Defendants were continuously in violation of the requirements of the HSR Act each day beginning on July 26, 2021, until XCL and Verdun ceased exercising operational control over relevant aspects of EP's business and the Purchase Agreement was amended on October 27, 2021.

Request for Relief

Wherefore, the United States requests:

(a) that the Court adjudge and decree that each Defendant violated the HSR Act and was in violation during the period beginning on July 26, 2021, and ending on October 27, 2021, a total of 94 days;

(b) that the Court order the Defendants pay to the United States an appropriate civil penalty as provided under Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), and 16 CFR 1.98(a);

(c) that the Defendants, their officers, directors, agents, employees, subsidiaries, and successors, and all other persons acting or claiming to act on their behalf, be enjoined, restrained, and prohibited for a period of ten years from, in any manner, directly or indirectly, engaging in any other agreement, combination, or conspiracy that has the same effect as the alleged violation;

(d) that the Court order such other and further relief as it may deem just and proper; and

(e) that the Court award the United States its costs of this suit.

Date: 2025

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

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United States District Court for the District of Columbia

United States of America, Plaintiff, v. *XCL RESOURCES HOLDINGS, LLC, VERDUN OIL COMPANY II LLC,* and *EP ENERGY LLC,* Defendants.

Civil Action No. 1:25–cv–00041.

[Proposed] Final Judgment

WHEREAS the United States of America filed its Complaint on January 7, 2025, alleging that Defendants XCL Resources Holdings, LLC, Verdun Oil Company II LLC, and EP Energy LLC violated Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the ''Hart-Scott-Rodino Act''), and the United States and Defendants XCL Resources Holdings, LLC, Verdun Oil Company II LLC, and EP Energy LLC, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party regarding any issue of fact or law;

And Whereas Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon the consent of the parties hereto, it is *Ordered, Adjudged, And Decreed:*

I. Jurisdiction

The Court has jurisdiction over the subject matter of this action. The Defendants consent solely for the purpose of this action and the entry of this Final Judgment that this Court has jurisdiction over each of the parties to this action. The Complaint states a claim upon which relief may be granted against the Defendants under Section 7A of the Clayton Act, 15 U.S.C. 18a.

II. Definitions

A. ''XCL'' means XCL Resources Holdings, LLC, a limited liability company organized, existing, and doing business under the laws of the state of Delaware, with its executive offices and principal place of business located at 600 N. Shepherd Drive, Suite 390, Houston, Texas 77007, including its successors and assigns, and its subsidiaries and divisions.

B. ''Verdun'' means Verdun Oil Company II LLC, a limited liability company organized, existing, and doing business under the laws of the state of Texas, with its executive offices and principal place of business located at 945 Bunker Hill Road, Suite 1300, Houston, Texas 77024, including its successors and assigns, and its subsidiaries and divisions.

C. ''EP Energy'' means EP Energy LLC, a limited liability company organized, existing, and doing business under the laws of the state of Delaware, with its executive offices and principal place of business located at 945 Bunker Hill Road, Suite 100, Houston, Texas 77024, including its successors and assigns, and its subsidiaries and divisions.

D. ''Agreement'' means any agreement, contract, or mutual understanding, whether formal or informal, written, or unwritten.

E. ''Antitrust Laws'' means the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.,* the Sherman Act, 15 U.S.C. 1 *et seq.,* the Clayton Act, 15 U.S.C. 12 *et seq.,* and the Hart-Scott-Rodino Act, 15 U.S.C. 18a.

F. ''Competing Product'' means any product, service, or technology included in a Reportable Transaction that is offered for sale, license, or distribution to customers in the same state, or produced in the same state or geological basin, by a Defendant and any other party to the Reportable Transaction.

G. ''Farm-in agreement'' or ''Farm-out agreement'' means an agreement in which the owner or lessee of mineral rights assigns an interest in such mineral rights to another party, in exchange for such other party providing specified exploration and/or development activities, funding for such exploration and/or development activities, or contributing or swapping mineral acreage, regardless of whether the owner or lessee retains working interests, overriding royalty interests, or other types of economic interests. The agreement is termed a ''Farm-in agreement'' from the viewpoint of the party acquiring such interest, and a ''Farm-out agreement'' from the viewpoint of the owner or lessee of the mineral rights assigning such interest.

H. ''Non-Public Information'' means any information related to the assets and businesses included in a Reportable Transaction known by the Defendant or another party to the Reportable Transaction, excluding any information that was or becomes available to the public through means other than disclosure by the receiving party.

I. ''Pre-consummation Period'' means the period between the signing of an agreement or letter of intent for a Reportable Transaction, and the earlier of the expiration or termination of the applicable waiting period, and the abandonment of the Reportable Transaction.

J. ''Regulations'' means any rule, regulation, statement, or interpretation relating to the Hart-Scott-Rodino Act that has binding legal effect with respect to the implementation or application of the Hart-Scott-Rodino Act or any section or subsection within 16 CFR 801–803.

K. ''Reportable Transaction'' means a transaction to which a Defendant is a party that is reportable under Section 7A the Clayton Act, 15 U.S.C. 18a, including the rules, regulations and formal interpretations implementing the section.

III. Applicability

This Final Judgment applies to XCL, Verdun, and EP Energy, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Civil Penalty

A. Judgment is hereby entered in this matter in favor of Plaintiff and against Defendants, and, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Public Law 104134 § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C.

2461), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74 § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 89 FR 9764 (February 12, 2024), XCL and Verdun jointly and severally are hereby ordered to pay a civil penalty in the amount of $2,842,188.50, and EP Energy is hereby ordered to pay a civil penalty in the amount of $2,842,188.50, for a total among all Defendants of $5,684,377.00. Payment of the civil penalty ordered hereby shall be made by wire transfer of funds or cashier's check. If the payment is to be made by wire transfer, prior to making the transfer, Defendant will contact the Budget and Fiscal Section of the Antitrust Division's Executive Office at *ATR.EXO-Fiscal-Inquiries@usdoj.gov* for instructions. If the payment is made by cashier's check, the check must be made payable to the United States Department of Justice—Antitrust Division and delivered to: Chief, Budget & Fiscal Section, Executive Office, Antitrust Division, United States Department of Justice, Liberty Square Building, 450 5th Street NW, Room 3016, Washington, DC 20530.

B. Defendants shall pay the full amount of the civil penalty within thirty (30) days of entry of this Final Judgment. In the event of a default or delay in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of the default or delay to the date of payment.

V. Prohibited Conduct

A. During the Pre-consummation Period for any Reportable Transaction, the Defendant shall not enter into any Agreement with any other party to the transaction to:

1. combine, merge, or transfer (in whole or in part) any operational or decision-making control over any aspect of the business, assets, or interests that are part of the Reportable Transaction including (a) the production, marketing, or distribution of any to-be-acquired product; or (b) any sales, service, or procurement terms for such products;

2. require one party to the Reportable Transaction to obtain approval from another party to the Reportable Transaction for any ordinary-course business activities or expenses, including planned capital expenditures;

3. delay or suspend ordinary-course sales or development efforts; or

4. disclose or seek the disclosure of the following information for any Competing Product:

a. current or future prices or contract offers; or

b. Non-Public Information relating to customers, current or future drilling and completions, production, sales, or shipments to customers.

Provided, however, that nothing in this Final Judgment prohibits Defendants from disclosing or seeking information relating to a Competing Product (i) that is publicly available at the time disclosure occurs, or (ii) that is necessary to conduct reasonable and customary due diligence of or integration planning for the proposed transaction, provided such activity by Defendants are supervised by antitrust counsel and occurs pursuant to a non-disclosure agreement that (a) limits use of the information to conducting due diligence or integration planning (including limiting dissemination of the information to individuals involved in or supervising due diligence or integration planning), (b) prohibits disclosure of the information to any employee of the receiving entity who is directly responsible for the marketing, pricing, or sales of a Competing Product, and (c) requires the recipient to delete or destroy the information if the Reportable Transaction does not close.

VI. Permitted Conduct

Nothing in this Final Judgment prohibits Defendants from:

A. Agreeing that a party to a transaction shall continue to operate in the ordinary course of business during the Pre-consummation Period;

B. Agreeing that a party to a transaction forgo conduct that would cause a material adverse change in the value of to-be-acquired assets during the Pre-consummation Period;

C. Negotiating, agreeing to, or participating in joint operating, joint development, Farm-in, or Farm-out agreements,

Provided, however, that the joint operating, joint development, Farm-in, or Farm-out agreements do not relate to assets included as part of any Reportable Transaction during the Pre-consummation Period; or

D. Disclosing Non-public Information related to Competing Products in the context of litigation or settlement discussions if the disclosure is subject to a protective order.

VII. Compliance

A. Defendants shall design, maintain, and operate an antitrust compliance program to ensure compliance with this Final Judgment and the Antitrust Laws, and as part of such program shall:

1. within 30 days of entry of this Final Judgment, appoint or retain a qualified antitrust compliance officer (''Antitrust Compliance Officer'') to supervise the design, maintenance, and operation of the program, and shall authorize the Antitrust Compliance Officer to perform all tasks necessary to fulfill these obligations. Defendants may replace the Antitrust Compliance Officer with another qualified person at any time;

2. within 45 days of entry of this Final Judgment, distribute a copy of this Final Judgment to each current officer and director, and each employee, agent, or other person who has responsibility or authority over sales, marketing, strategic planning, exploration and development, or mergers and acquisitions;

3. distribute a copy of this Final Judgment to any person who takes a position described in Paragraph VII(A)(2) within 30 days of the date the person takes such position;

4. provide in-person or online training concerning Defendants' obligations under this Final Judgment and the Antitrust Laws as they apply to Defendants' activities, to each person designated in Paragraphs VII(A)(2) or (3):

a. no later than 45 days after this Final Judgment is entered;

b. no later than 30 days after a person first takes a position described in Paragraph VII(A)(2); and

c. at least annually.

Provided, however, that as to any person on extended leave (*e.g.,* parental, family, or disability leave), the training for such person under the above schedule shall be completed within 30 days of the date the person returns to work;

5. obtain within 60 days from the entry of this Final Judgment, and annually thereafter, and retain for the duration of this Final Judgment, a written certification from each person designated in Paragraphs VII(A)(2) & (3) that the person: (a) has received, read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment; and

6. provide a copy of this Final Judgment (or a hyperlink to a copy of this Final Judgment) to each party to a Reportable Transaction no later than signing of the definitive agreement.

B. Within 60 days of entry of this Final Judgment, Defendants shall certify to Plaintiff that they have (1) designed, established, and are maintaining an antitrust compliance program; (2) designated an Antitrust Compliance Officer, specifying their name, business address, and telephone number; (3) distributed this Final Judgment as required in Paragraph VII(A)(2); and (4)

provided training as required in Paragraph VII(A)(4).

C. For the term of this Final Judgment, on or before its anniversary date, Defendants shall file with Plaintiff an annual statement verifying that they are complying with the requirements of this Final Judgment and describing in detail the manner of their compliance with the provisions of Sections V and VII.

D. If any of Defendants' directors or officers, or the Antitrust Compliance Officer, learns of any violation of this Final Judgment, Defendants shall within three (3) business days take appropriate action to assure continued compliance with this Final Judgment, and shall notify the Plaintiff in writing of the violation within 10 business days of learning of the violation.

VIII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States, including agents and consultants retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained pursuant to any provision of this Final Judgment may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand jury proceedings, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. In the event of a request by a third party, pursuant to the Freedom of Information Act, 5 U.S.C. 552, for disclosure of information obtained pursuant to any provision of this Final Judgment, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. Designations of confidentiality expire 10 years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' See 28 CFR 16.7(b).

E. If at the time that Defendants furnish information or documents to the United States pursuant to any provision of this Final Judgment, Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States must give Defendants 10 calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

IX. Retention of Jurisdiction

This Court retains jurisdiction to enable any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

X. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws, including Section 7A of the Clayton Act and Regulations promulgated thereunder. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that a Defendant has violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment for that Defendant, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved prior to litigation, each Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four (4) years after the expiration of this Final Judgment pursuant to Section XI, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action under this Section, (2) any appropriate contempt remedies, (3) any additional relief needed to ensure the Defendant complies with the terms of the Final Judgment, and (4) fees or expenses as called for in Paragraph X(C).

XI. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry if each Defendant has paid the civil penalty in full.

XII. Costs

Each party shall bear its own costs of this action.

XIII. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *XCL RESOURCES HOLDINGS, LLC, VERDUN OIL COMPANY II LLC, and EP ENERGY LLC* Defendants. Civil Action No. 1:25-cv-00041.

Competitive Impact Statement

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA'' or ''Tunney Act''), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment filed in this civil antitrust proceeding.

I. Nature and Purpose of Proceedings

On January 7, 2025, the United States filed a Complaint against Defendants XCL Resources Holdings, LLC (''XCL''), Verdun Oil Company II LLC (''Verdun''), and EP Energy LLC (''EP'') (together, ''Defendants''), related to XCL and Verdun's acquisition of EP. The Complaint alleges that Defendants violated Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the ''HSR Act'').

The Complaint alleges that XCL and Verdun acquired EP, through a transaction in excess of the then-applicable statutory thresholds, without observing the required HSR Act waiting period. The HSR Act provides that ''no person shall acquire, directly or indirectly, any voting securities of any person'' exceeding certain thresholds until that person has filed pre-acquisition notification and report forms with the Department of Justice and the Federal Trade Commission (collectively, the ''federal antitrust agencies'' or ''agencies'') and the post-filing waiting period has expired. 15 U.S.C. 18a(a). A key purpose of the notification and waiting period is to protect consumers and competition from potentially anticompetitive transactions by providing the agencies an opportunity to conduct an antitrust review of proposed transactions before they are consummated.

At the same time the Complaint was filed, the United States also filed a Stipulation and proposed Final Judgment. Under the proposed Final Judgment, which is explained more fully below, Defendants are prohibited from engaging in specified conduct during the term of the order and are required to pay a civil penalty to the United States in the amount of $5,684,377. The proposed Final Judgment is designed to deter HSR Act violations by XCL, Verdun, and similarly situated acquirers.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and punish violations thereof.

II. Description of the Events

A. XCL and Verdun's acquisition of EP

On July 26, 2021, XCL and Verdun agreed to acquire EP for approximately $1.4 billion. Defendants are engaged, among other things, in the development, production, and sale of crude oil in the United States. XCL operates in the Uinta Basin of Utah. Verdun operates in the Eagle Ford area of Texas. EP operates in both the Uinta Basis and the Eagle Ford area. Shortly thereafter, Defendants' parent entities filed the pre-acquisition Notification and Report forms required by Section 7A of the Clayton Act. After reviewing the parties' filings, the Federal Trade Commission (''FTC'') opened an investigation into the competitive effects of the proposed transaction. XCL and EP were two of four significant oil and gas development and production companies in northeast Utah's Uinta Basin. The FTC alleged in its complaint that, after the acquisition of EP, if XCL reduced the volume of crude oil that it supplied to Salt Lake City, Salt Lake City area refiners would be forced to pay more for Uinta Basin waxy crude oil. Ultimately, the FTC obtained a consent agreement resolving its concerns about the impact of the transaction on competition in the market for the development, production, and sale of waxy crude oil in the Uinta Basin area of Utah. The consent agreement required Defendants to divest all of EP's Utah operations to a qualified third-party operator, Crescent Energy. Entry of the consent agreement terminated the HSR Act waiting period on March 25, 2022. XCL and Verdun consummated the transaction on March 30, 2022, and EP is now a wholly owned subsidiary of Verdun.

B. Defendants' alleged violation of Section 7A

The HSR Act requirements apply to a transaction if, as a result of the transaction, the acquirer will ''hold'' assets or voting securities valued above the thresholds. Under HSR Rule 801.1(c), to ''hold'' assets or voting securities means ''beneficial ownership, whether direct, or indirect through fiduciaries, agents, controlled entities or other means.'' 16 CFR 801.1(c). Thus, under the Act, parties must make an HSR Act filing and observe a waiting period before transferring beneficial ownership of the assets or voting securities to be acquired. The Statement of Basis and Purpose accompanying the Rules explains that beneficial ownership is determined on a case-by-case basis, based on the indicia of beneficial ownership which include, among others, the right to obtain the benefit of any increase in value or dividends and the risk of loss of value. 43 FR 33,449 (July 31, 1978). A firm may also gain beneficial ownership by obtaining ''operational control'' of an asset.

The combination of XCL and Verdun's agreement to purchase EP and their assumption of key ordinary-course functions transferred beneficial ownership of EP's business to XCL and Verdun before they had fulfilled their obligations under the HSR Act. Specifically, the July 26, 2021 Purchase Agreement provided for the immediate transfer of control over key aspects of EP's business to XCL and Verdun, including granting XCL and Verdun approval rights over EP's ongoing and planned crude oil development and production activities and many of EP's ordinary-course expenditures. XCL put an immediate halt to EP's new well-drilling activities, so that XCL—not EP—could control the development and production plans for EP's drilling assets moving forward. Even though XCL and Verdun allowed EP to resume its own well-drilling and planning activities after Defendants realized that the FTC would investigate the transaction, the temporary halts resulted in EP having crude oil supply shortages in the following months. Defendants predicted these shortages and specifically provided in the Purchase Agreement that XCL and Verdun—not EP—would

bear all costs associated with EP's supply shortages.

XCL and Verdun also exercised operational control over EP by, *inter alia,* working directly with EP's customers on EP's behalf; requiring EP to provide competitively sensitive information to XCL and Verdun businesspeople; requiring approval of ordinary-course expenditures; and coordinating with EP on EP's contract negotiations with certain customers in the Eagle Ford production area. The illegal conduct lasted through October 27, 2021, when the Defendants executed an amendment to the Purchase Agreement which allowed EP to operate independently once again and in the ordinary course of business, without XCL's or Verdun's control over its day-to-day operations. The Defendants were in violation of the HSR Act for a period of 94 days, from when the Purchase Agreement was signed, on July 26, 2021, until the Purchase Agreement was amended, on October 27, 2021. Among other things, XCL's temporary halting of EP's development activities contributed to EP having crude oil supply shortages in September and October 2021 at a time when the United States was experiencing significant supply shortages and spiking crude oil prices due to sudden demand increases as COVID–19 restrictions eased. XCL and EP—direct competitors in the marketplace—then worked in concert to supply EP's customers to satisfy EP's customer supply commitments. Verdun also coordinated with EP on EP's contract negotiations with certain customers in the Eagle Ford production area. Specifically, Verdun observed that certain EP contracts included below-market prices and directed EP to raise them in the next contracting period. EP complied.

Agreements that transfer some indicia of beneficial ownership, even if common in an industry, may violate Section 7A if entered into while the buyer intends to acquire the asset. Entering into such agreements before the HSR Act waiting period expires defeats the purpose of the HSR Act by enabling the acquiring person to direct the acquired person's business to bring about the effects of an acquisition prior to completion of the agencies' antitrust review.

III. Explanation of the Proposed Final Judgment

The relief required by the proposed Final Judgment will prevent future violations of Section 7A of the Clayton Act of the type Defendants committed and secures a monetary civil penalty for XCL's, Verdun's, and EP's violation of Section 7A. The proposed Final Judgment sets forth prohibited and permitted conduct, a compliance program the Defendants must follow, and procedures available to the United States to determine and ensure compliance with the Final Judgment. Section XI provides that these conditions will expire ten years after the entry of the Final Judgment.

A. Prohibited Conduct

Section V of the proposed Final Judgment is designed to prevent future HSR Act violations of the sort alleged in the Complaint. During the ''pre-consummation period'' of any future HSR-reportable transaction—after executing an agreement or letter of intent for a transaction subject to the reporting requirements of the HSR Act and until the expiration of the statutory waiting period or abandonment of the transaction—the Defendants are prohibited from entering into any agreement with the other contracting party or parties to combine, merge, or transfer, in whole or in part, any operational or decision-making control over businesses, assets, or interests to be acquired. This injunction applies to all transactions subject to the reporting requirements of the HSR Act, regardless of the particular products involved or whether any other party to the transaction competes with the Defendants. The injunction also prevents an acquirer from obtaining approval rights or authority over ordinary-course decisions of the to-be-acquired entity or unrestricted access to certain categories of non-public information. To be clear, the injunction is not intended to cover all means of transferring beneficial ownership—which is assessed on a case-by-case basis depending on a variety of factors—but to broadly cover the Defendants' conduct in this matter and prevent recurrence.

B. Permitted Conduct

Section VI of the proposed Final Judgment identifies certain agreements and conduct that are permitted by the Judgment. Paragraphs VI(A) and VI(B) ensure that the decree will not be interpreted to forbid specified ''conduct of business'' covenants that are typically found in merger agreements. These are customary provisions found in most merger agreements and are intended to protect the value of the transaction and prevent a to-be-acquired person from wasting assets. Paragraph VI(C) ensures that the decree does not prevent certain ordinary-course agreements in the oil and gas industry. Paragraph VI(D) recognizes narrow exceptions to the restrictions on access to non-public information in Paragraph V(A)(4) for certain activities, such as participating in litigation.

C. Compliance

Sections VII and VIII of the proposed Final Judgment set forth various compliance procedures. Section VII sets up an affirmative compliance program directed toward ensuring compliance with the limitations imposed by the proposed Final Judgment and with the federal antitrust laws. The compliance program includes the designation of a qualified antitrust compliance officer who is required to ensure that the relevant Defendant distributes a copy of the Final Judgment to each current and succeeding director, office, employee, agent, or other person with the responsibility over sales, marketing, strategic planning, exploration and development, or mergers and acquisitions; briefs each such person regarding compliance with the Final Judgment and the antitrust laws as they apply to Defendants' activities; and obtains certification annually from each such person that he or she understands his or her obligations under the Final Judgment and agrees to abide by its terms. In addition, Defendants must provide a copy of the Final Judgment to certain parties entering a merger or acquisition with a Defendant prior to signing the definitive agreement. Section VII of the proposed Final Judgment further requires the compliance officer to certify to the United States that Defendant is in compliance and to report any violations of the Final Judgment.

To facilitate monitoring of Defendants' compliance with the Final Judgment, Section VIII grants DOJ access, upon reasonable notice, to Defendants' records and documents relating to matters contained in the Final Judgment. Defendants must also make its personnel available for interviews or depositions regarding such matters. In addition, Defendants must, upon request, prepare written reports relating to matter contained in the Final Judgment.

D. Civil Penalties

The proposed Final Judgment imposes a $5,684,377 civil penalty for Defendants' violation of the HSR Act. The United States adjusted the penalty downward from the maximum permitted under the HSR Act in part because the Defendants were willing to resolve the matter by consent decree and avoid a prolonged investigation and litigation. The relief will have a beneficial effect on competition because

it will deter future instances in which parties seek to immediately acquire control of an independent competitive presence before filing the required pre-acquisition notifications with the agencies and observing the required waiting period. At the same time, the penalty will not have any adverse effect on competition.

IV. Remedies Available to Potential Private Litigants

There is no private antitrust action for HSR Act violations; therefore, entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or within sixty (60) days of the first date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with this Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**. Written comments should be submitted to: Maribeth Petrizzi, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW, CC–8416, Washington, DC 20580, Email: *bccompliance@ftc.gov*.

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against the Defendants. The United States is satisfied, however, that the relief required by the proposed Final Judgment will remedy the violation alleged in the Complaint and deter violations by similarly situated entities in the future. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the Appa for the Proposed Final Judgment

Under the Clayton Act and APPA, proposed Final Judgments, or ''consent decrees,'' in antitrust cases brought by the United States are subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment is ''in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

Id. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one, as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v, U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting the government has broad discretion of the adequacy of the relief at issue); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's Complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted);; *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3.

Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should also bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is the one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted); *see also United States* v. *Deutsche Telekom AG,* No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Microsoft,* 56 F.3d at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United*

States v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' (internal citations omitted)); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.''' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (concluding that ''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' 489 F. Supp. 2d at 15.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it enacted the Tunney Act in 1974. As Senator Tunney explained: ''The court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Date: January 7, 2025

Respectfully Submitted,

Kenneth A. Libby, Special Attorney, U.S. Department of Justice, Antitrust Division, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, Phone: (202) 326–2694, Email: *klibby@ftc.gov*.

[FR Doc. 2025–01252 Filed 1–17–25; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The National Advanced Mobility Consortium, Inc.

Notice is hereby given that, on October 10, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The National Advanced Mobility Consortium, Inc. (''NAMC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. On February 3, 2015, the RTC officially changed its name to NAMC. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Abaco Systems Inc., Huntsville, AL; ACP Technologies, LLC, St. Clair Shores, MI; Acutronic USA, Inc, Pittsburgh, PA; AEF-Performance, LLC, Picayune, MS; AIVOT Robotics, Inc., Seattle, WA; All Foam Products Co, Middlefield, OH; Amazon Web Services, Seattle, WA; American Lithium Energy Corporation, Carlsbad, CA; American Tooling Center, Inc., Lansing, MI; Amphenol Borisch Technologies, Grand Rapids, MI; Ascent AeroSystems, Wilmington, MA; ATA Engineering, Inc, San Diego, CA; ATI, Arlington, VA; AVL Mobility Technologies, Inc., Plymouth, MI; Banks Technologies, Azusa, CA; Beast Code, LLC., Fort Walton Beach, FL; Belding Tool and Machine, Belding, MI; Bevilacqua Research Corporation, Huntsville, AL; BlueSky Mast, Inc., Largo, FL; Bosch Rexroth Corporation, Bethlehem, PA; Buffalo Armory Group, LLC, Buffalo, NY; Cambium Biomaterials, Mojave, CA; Canis Automotive Labs Inc, Highlands Ranch, CO; Canoo Technologies Inc., Torrance, CA; Clear Align, Eagleville, PA; Compound Eye Inc., Redwood City, CA; Computer Access Technologies, LLC, Colorado Springs, CO; CoVar, McLean, VA; Cryptic Vector, Liberty Township, OH; CTC Enterprise Ventures Corporation, Johnstown, PA; Cubic Defense Applications Inc., San Diego, Ca; Cummings Aerospace, Inc., Huntsville, AL; Curtiss Wright 901D, Monsey, NY; Curtiss-Wright (Teletronics Technology Corp), Newtown, PA; CVX Instruments, LLC, Charlevoix, MI; D–2 Incorporated, Bourne, MA; D'Angelo Technologies, LLC, Dayton, OH; Detroit Manufacturing Systems, LLC., Detroit, MI; Diversified Technologies, Inc., Bedford, MA; Doodle Labs, LLC, Marina Del Rey, CA; DTCUBED, LLC, Sewell, NJ; Duality Robotics, Inc., San Mateo, CA; Dynetics, Inc., Huntsville, AL; Easy Aerial, Brooklyn, NY; ELC Industries, d.b.a. Aurora Defense Group, Aurora, IL; Emelody Worldwide Inc., Peachtree Corners, GA; esc Aerospace US, Inc., Orlando, FL; Florida Institute for Human & Machine Cognition, Pensacola, FL; FN America, LLC, MCLEAN, VA; Galley Power Inc, Hudson, MA; GE Aviation Systems, LLC, Grand Rapids, MI; General Technical Services, LLC, Wall

Township, NJ; HDT Expeditionary Systems, Inc., Operating through its BLADE division, Fredericksburg, VA; Highland Engineering, Inc, Howell, MI; HII Unmanned Systems, Inc., Pocasset, MA; Hoverfly Technologies Inc., Sanford, FL; HPTechAi, LLC, College Station, TX; IDV USA Inc., York, PA; Infrared (IR) Telemetrics, Inc., Hancock, MI; Kodiak Robotics, Inc., Mountain View, CA; Kord Technologies, LLC, Huntsville, AL; Latent AI, Skillman, NJ; Lawrence Technological University, Southfield, MI; Leonardo DRS AISR, Beavercreek, OH; Massie MFG., Inc., Baraga, MI; MAXISIQ, Lorton, VA; Menet Aero, Oak Creek, WI; Miltope Corporation, Hope Hull, AL; MOORE INTEGRITY ENGINEERING, LLC, SAN ANTONIO, TX; NOBLES WORLDWIDE, INC., St. Croix Falls, WI; Numerica Corporation, Fort Collins, CO; Oasis Advanced Engineering, Inc., Lake Orion, MI; Oceanit Laboratories, Inc., Honolulu, HI; Overland AI Inc, Seattle, WA; Palomar Display Products, Inc, Carlsbad, CA; Pilot Systems International, LLC, Farmington Hills, MI; Polymath Robotics, San Francisco, CA; Primordial Labs Inc., New Haven, CT; Raglan, Wilmington, NC; Raytheon BBN Technologies Corp, Cambridge, MA; Raytheon Technologies Corporation (RTRC), EAST HARTFORD, CT; Sabel Systems Technology Solutions, LLC, Beavercreek, OH; Safire Technology Group, Tysons, VA; SAPA Transmission, Shelby Township, MI; SECO USA, Inc., Rockville, MD; SecureCo, Inc., New York, NY; SeeByte Inc., San Diego, CA; Sentry View Systems, Inc, Melbourne, FL; Shift5, Inc., Rosslyn, VA; Skydex Technologies Inc, Centennial, CO; Smart Shooter Inc, Herndon, VA; Sparton Aydin, LLC, dba Aydin Displays, Birdsboro, PA; Swan Technology Corporation, Pittsburgh, PA; Swarmbotics AI, Scottsdale, AZ; Systems Innovation Engineering, LLC, Mullica Hill, NJ; T2S, LLC, Belcamp, MD; TeleSwivel, LLC, Durham, NC; TeraDAR, Inc., Cambridge, MA; ThayerMahan, Groton, CT; The MathWorks, Inc., Novi, MI; TrellisWare Technologies, Inc., San Diego, CA; TTTech North America, Inc., Andover, MA; Tucson Embedded Systems, Inc. (TES-i), Tucson, AZ; Ultra Electronics Advanced Tactical Systems, Inc., Austin, TX; Unmanned Systems Inc, dba Albers Aerospace, McKinney, TX; Vertex Modernization and Sustainment, a V2X Company, Indianapolis, IN; Vision Products, LLC, Campbell, CA; Wegmann USA, Inc., Lynchburg, VA; Wichita State University, Wichita, KS; Wright Electric Inc., Malta, NY, have been added as parties to this venture.

Also, ADI Technologies Inc., Chantilly, VA; All Foam Products Co, Middlefield, OH; Allied Defense, Sarasota, FL; Amerex Corporation, Trussville, AL; American Engineering Group, LLC, Akron, OH; Andromeda Systems Inc DUPLICATE, Jacksonville, FL; Applied Systems Engineering Inc. dba ASEI, Niceville, FL; Atlas Business Consulting, Inc., Southlake, TX; Bell Hellicopter Textron Inc., Hurst, TX; Citadel Defense Co, National City, CA; CITE Armored, Holly Springs, MS; CLogic Defense, Augusta, NJ; Compass Instruments, Inc., Sugar Grove, IL; Cornerstone Research Group, Miamisburg, OH; Cummins Corporate Research and Technology, Shoreview, MN; Czero Inc, Fort Collins, CO; DiSTI Corporation, Orlando, FL; Doodle Labs, LLC, Marina Del Rey, CA; Dynatrac Products Co., Inc., Huntington Beach, CA; Dynetics, Inc., Huntsville, AL; ELC Industries, d.b.a. Aurora Defense Group, Aurora, IL; Emelody Worldwide Inc., Peachtree Corners, GA; EngeniusMicro, Huntsville, AL; Enginuity Power Systems, Alexandria, VA; EnQuanta, Minneapolis, MN; Epirus Inc, Hawthorne, CA; esc Aerospace US, Inc., Orlando, FL; Essex Industries Inc, St. Louis, MO; Exyn Technologies, Philadelphia, PA; FSI Defense, Fort Worth, TX; GC Associates USA, LLC, Arlington, VA; General Kinetics, LLC, Bedford, NH; GK Mechanical Systems, LLC, Brookfield, CT; GRIMM, Stafford, VA; GuardKnox Cyber Technologies USA, Inc., Livonia, MI; Hawk Technologies, LLC, Hancock, MI; HIPPO POWER, LLC, dbaHIPPO MULTIPOWER, Kansas City, KS; HPTechAi, LLC, College Station, TX; Hupp and Associates Inc., dba Hupp Aerospace Defense, New Haven, IN; Indiana Mills & Manufacturing, Inc. (IMMI), Westfield, IN; IR Technologies (Impact Resources, Inc.), Bristow, VA; J.F. Taylor, Inc., Great Mills, MD; Leadtank Incorporated, dba RobosoftAI, Thousand Oaks, CA; Leonardo DRS AISR, Beavercreek, OH; Loch Harbour Group, Alexandria, VA; Logistic Services International, Inc., Jacksonville, FL; Mainstream Engineering Corporation, Rockledge, FL; Martin Technologies, New Hudson, MI; Menet Aero, Oak Creek, WI; Metawave Corporation, Carlsbad, CA; MIT Lincoln Laboratory, Lexington, MA; NOBLES WORLDWIDE, INC., St. Croix Falls, WI; Northrop Grumman Systems Corporation (Defense Systems), Huntsville, AL; NTL Industries Inc., Sterling Heights, MI; NVIDIA Corporation, Durham, NC; PacStar (Pacific Star Communications Inc), Portland, OR; Parts Life Inc, Moorestown, NJ; Pendar Technologies, LLC, Cambridge, MA; PPG Industries, Inc., Allison Park, PA; RE2, LLC, a wholly owned subsidiary of Sarcos, Pittsburgh, PA; ReLogic Research Inc., Huntsville, AL; Rocky Mountain Scientific Laboratory, Littleton, CO; Safe, Inc., Tempe, AZ; Smart Shooter Inc, Herndon, VA; Spark Insights, LLC, Tampa, FL; Squarehead Technology, LLC, Herndon, VA; Swift Engineering Inc., San Clemente, CA; Systel Inc., Sugar Land, TX; Telefactor Robotics, West Conshohocken, PA; The Armored Group, LLC, Phoenix, AZ; Ultra Advanced Tactical Systems, Austin, TX; Unmanned Systems Inc, dba Albers Aerospace, McKinney, TX; UVision-USA Corporation, Purcellville, VA; VISIMO, Coraopolis, PA; VTN Manufacturing Inc., Fremont, CA; Wulco, Inc dba Jet Machine, Cincinnati, OH, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NAMC intends to file additional written notifications disclosing all changes in membership.

On October 15, 2009, NAMC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 30, 2009 (74 FR 62599).

The last notification was filed with the Department on October 11, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 21, 2023 (88 FR 88411).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2025–01249 Filed 1–17–25; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1476]

Bulk Manufacturer of Controlled Substances Application: Groff Health, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Groff Health, 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 March 24, 2025. Such persons may also file a written request for a hearing on the application on or before March 24, 2025.

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 September 27, 2024, Groff Health Inc., 2218 South Queen Street, York, Pennsylvania 17402–4631 applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to bulk manufacture the listed controlled substances for internal use or for sale to its customers. No other activities for these drug codes are authorized for this registration.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2025–01349 Filed 1–17–25; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1477]

Bulk Manufacturer of Controlled Substances Application: Siegfried USA, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Siegfried USA, 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 March 24, 2025. Such persons may also file a written request for a hearing on the application on or before March 24, 2025.

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 November 20, 2024, Siegfried USA, LLC, 33 Industrial Park Road, Pennsville, New Jersey 08070–3244 applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
Dihydromorphine	9145	I
Hydromorphinol	9301	I
Amphetamine	1100	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Codeine	9050	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Methadone	9250	II
Methadone intermediate	9254	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Opium tincture	9630	II
Oxymorphone	9652	II
Tapentadol	9780	II

The company plans to bulk manufacture the listed controlled substances in bulk for sale to its customers. No other activities for these drug codes are authorized for this registration.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2025–01350 Filed 1–17–25; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1474]

Bulk Manufacturer of Controlled Substances Application: Invizyne Technologies, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Invizyne Technologies, 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 March 24, 2025. Such persons may also file a written request for a hearing on the application on or before March 24, 2025.

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 November 14, 2024, Invizyne Technologies, Inc., 750 Royal Oaks Drive, Suite 106, Monrovia, California 91016–6357 applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols ...	7370	I

The company plans to bulk manufacture the listed controlled substance for the internal use intermediates or for sale to its customers. In reference to drug code 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture this drug as synthetic. No other activity for this drug code is authorized for this registration.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2025–01347 Filed 1–17–25; 8:45 am]

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DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ) Docket No. 1833]

Body Armor Manufacturer Workshop

AGENCY: National Institute of Justice, Office of Justice Programs, U.S. Department of Justice.

ACTION: Notice.

SUMMARY: The National Institute of Justice (NIJ) will hold an online workshop for body armor manufacturers to provide updates on its standards and conformity assessment activities related to ballistic-resistant body armor.

DATES: The workshop will be held online Wednesday, March 19, 2025, from 1 p.m. to 3 p.m. eastern time.

FOR FURTHER INFORMATION CONTACT: Jared Gardner, Technology and Standards Advisor, Office of Technology and Standards, National Institute of Justice, 999 North Capitol Street NE, Washington, DC 20531, by telephone at (202) 702–2917 [Note: this is not a toll-free telephone number], or by email at *jared.gardner@usdoj.gov.*

SUPPLEMENTARY INFORMATION: The National Institute of Justice (NIJ) will hold an online workshop for body armor manufacturers to provide updates on its standards and conformity assessment activities related to ballistic-resistant body armor. NIJ will discuss recent addenda to NIJ Standard 0101.07, ''Ballistic Resistance of Body Armor'', and NIJ Standard 0123.00, ''Specification for NIJ Ballistic Protection Levels and Associated Test Threats''. The NIJ Compliance Testing Program (CTP) will update program participants on the initial implementation of testing body armor to NIJ Standard 0101.07 (''07'') and the anticipated timeline for publication of the NIJ Compliant Products List (CPL) for those ''07'' armor models. The NIJ CTP will also discuss ongoing administration of the NIJ CPL for armor compliant with NIJ Standard 0101.06 (''06'') and continued Follow-up Inspection and Testing (FIT) for those ''06'' armor models. Potential revisions to NIJ CTP program requirements will also be discussed, including FIT testing procedures for ''07'' armor models listed on the NIJ CPL, disclosure of information about ballistic materials used to manufacture body armor submitted to the NIJ CTP for certification, and labeling requirements, among others. NIJ will also discuss potential changes to how information is displayed on the NIJ Compliant Products List and how it anticipates future updates to NIJ standards and NIJ CTP program requirements will be communicated.

The workshop will be presented as an online webinar with opportunities for attendees to ask questions. To register for the workshop, please send an email to *askctp@nijctp.org* by 5 p.m. eastern time on Friday, March 14, 2025, and provide the name of your company and the names of the representatives who will attend. Please put ''Body Armor Manufacturer Workshop'' in the subject line of the email. A preliminary agenda will be sent to registered attendees approximately 48 hours prior to the workshop.

For more information on NIJ's standards and conformity assessment activities, please visit *https://nij.ojp.gov/topics/equipment-and-technology/standards-and-conformity-assessment.* For more information on body armor, please visit *https://nij.ojp.gov/topics/equipment-and-technology/body-armor.* More information on the NIJ CTP can be found here: *https://cjttec.org/compliance-testing-program/.*

NIJ publishes this notice pursuant to its authority at 34 U.S.C. 10122(c) and 6 U.S.C. 161–165.

Nancy La Vigne,

Director, National Institute of Justice.

[FR Doc. 2025–01247 Filed 1–17–25; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–12101]

Proposed Exemption From Certain Prohibited Transaction Restrictions Involving Northern Trust Corporation (Together With its Current and Future Affiliates, Northern or the Applicant) Located in Chicago, IL

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code). The proposed exemption would allow certain entities with specified relationships to Northern Trust Fiduciary Services (Guernsey) Limited (NTFS) (hereinafter, the Northern QPAMs, as further defined in section I(e) of the operative language) to rely on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the judgment of conviction (the Conviction) against NTFS for aiding and abetting tax fraud entered in France in the Paris Court of Appeal, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12.

DATES:

Exemption date: This proposed exemption would be in effect for a period of five years beginning on March 5, 2025, and ending on March 4, 2030 (the Exemption Period).

Comments due: Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by March 7, 2025.

ADDRESSES: All written comments and requests for a hearing should be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D–12101 via

email to *e-OED@dol.gov* or online through *https://www.regulations.gov.* Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption (the Application) and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210, reachable by telephone at (202) 693–8673. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Comments: Persons are encouraged to submit all comments electronically without submitting paper versions. Comments should state the nature of the person's interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. The Department would publish a notice announcing such hearing in the **Federal Register**. The Department may decline to hold a hearing if: (1) the request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

Warning: All comments received will be included in the public record 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 confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment.

Additionally, the *https://www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA 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 record and made available on the internet.

Proposed Exemption

The Department is considering granting the exemption pursuant to its authority under ERISA section 408(a) and Code section 4975(c)(2), and in accordance with the Department's exemption procedures.[1] If the Department grants a final exemption, the Northern QPAMs will not be precluded from relying on the QPAM Exemption [2] notwithstanding the Conviction, provided the conditions and definitions set forth in the exemption are met.

This proposed exemption would provide relief from certain restrictions set forth in ERISA sections 406 and 407.[3] It would not, however, provide relief from any other violation of law. Furthermore, the Department cautions that the relief in this proposed exemption would terminate immediately if, among other things, Northern or an affiliate of Northern (as defined in section VI(d) of PTE 84–14) [4] is convicted of a crime covered by section I(g) of PTE 84–14 (other than the Conviction) or any other violation occurs during the Exemption Period. Although Northern could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption.

The terms of this proposed exemption have been specifically designed to permit a plan to terminate its relationship with Northern or an Affiliate in an orderly and cost-effective fashion in the event of an additional conviction of them or a plan fiduciary determines that it otherwise prudent for a plan to terminate its relationship with Northern.

Summary of Facts and Represenations [5]

Northern Trust Corporation (Northern)

1. Northern is a financial holding company that provides investment management, asset and fund administration, fiduciary, and banking services for corporations, institutions, and affluent individuals. Northern conducts business through various U.S. and non-U.S. subsidiaries, including The Northern Trust Company (the Bank), an Illinois bank headquartered in Chicago, Illinois.

Northern QPAMS

2. Northern has several U.S. and non-U.S. affiliates that provide investment management services. The Northern

[1] 29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011).

[2] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), as amended at 75 FR 38837 (July 6, 2010), and as amended at 89 FR 23090 (April 3, 2024).

[3] For purposes of this proposed exemption, references to specific provisions of ERISA Title I, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975. Further, this proposed exemption, if granted, does not provide relief from the requirements of, or specific sections of, any law not noted above.

[4] PTE 84–14 section VI(d) defines the term ''affiliate'' for purposes of section I(g) as ''(1) Any person directly or indirectly through one or more intermediaries, Controlling, Controlled by, or under Common Control with the person, (2) Any director of, Relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who-(A) Is a highly compensated employee (as defined in Code section 4975(e)(2)(H)) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.'' For purposes of this definition, section VI(e) defines the terms ''Controlling,'' ''Controlled by,'' ''under Common Control with,'' and ''Controls'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

[5] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect factual findings or opinions of the Department, unless indicated otherwise. The Department notes that the availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in the Application (D–12101) are true and complete, and accurately describe all material terms of the transactions covered by this exemption. If there is any material change in a transaction covered by this exemption, or in a material fact or representation described in the Application, the exemption will cease to apply as of the date of such change.

affiliates that currently manage assets of plans subject to Part 4 of Title I of ERISA (*i.e.,* an ERISA-covered plan) or Code section 4975 (*i.e.,* an IRA; together, a Covered Plan), [6] collective investment trusts and other commingled funds on a discretionary basis, and that routinely rely on the QPAM Exemption to provide relief for party-in-interest transactions, are:

- *The Northern Trust Company* (the Bank) acts as trustee for plans subject to Title I of ERISA and IRAs and other accounts subject to ERISA or Code section 4975. The Bank also maintains ERISA-governed collective investment trusts and commingled vehicles for investment of plan assets.
- *Northern Trust Investments, Inc.* (NTI) is both an Illinois bank regulated by the Illinois Department of Financial and Professional Regulation and an investment adviser registered with the SEC under the Advisers Act with its principal office in Chicago, Illinois. NTI provides portfolio management services to corporations, public and private pension plans, Taft-Hartley plans, charitable institutions, foundations, endowments, municipalities, registered mutual funds, collective investment trusts, private investment funds, trust programs, individuals, wrap sponsors and other U.S. and international institutions. As of December 31, 2023, NTI manages discretionary assets of approximately $1,017 billion, including ERISA and IRA assets.
- *50 South Capital Advisors, LLC* (50 South) is an investment adviser registered with the SEC under the Advisers Act, with its principal office in Chicago, Illinois. 50 South provides portfolio management services to pooled investment vehicles including plan asset funds. As of December 31, 2023, 50 South manages discretionary assets of nearly $11.3 billion, including ERISA and IRA assets.
- *Northern Trust Securities, Inc.* (NTSI) is an investment advisor registered with the SEC under the Advisers Act with its principal office in Chicago, Illinois. NTSI provides portfolio management services to separately managed accounts. As of October 28, 2024, NTSI manages discretionary assets of approximately $1.27 billion, including ERISA and IRA assets.

3. According to the Applicant, the Northern QPAMs rely on the QPAM Exemption for transaction that include, without limitation, global fixed income, global equities, futures, options, swaps and other derivatives, investments made by alternative plan asset funds, including hedge funds, and similar instruments and strategies. The issuing documents for many instruments state that the investment manager is deemed to represent that it is relying, at least partially, on PTE 84–14. The four QPAMs described above, and any future manager affiliated with Northern that relies on the exemptive relief provided in PTE 84–14 with respect to any Covered Plan, are hereinafter referred to as the ''Northern QPAMs.''

The Convicted Entity: NTFS

4. Northern has an indirect wholly owned subsidiary, Northern, NTFS, that is a limited liability company organized under the laws of Guernsey. NTFS provides a wide range of services, including trust and fiduciary services, to a global client base that includes institutional clients (such as non-U.S. thrift savings and pension trusts of large corporations) and private ultra-high net worth individual or family office clients/trusts. The trust and company management and administration services provided by NTFS include ongoing interaction with the settlor and beneficiaries, investment managers and advisors, and the settlor's legal counsel, among others. NTFS also may appoint individual directors that are personnel of NTFS, if required, or more commonly corporate directors (entities wholly owned by NTFS) to act as the directors of some of the underlying holding companies owned by the trusts for which NTFS acts as trustee. These holding companies hold assets which could include cash, marketable securities, privately held companies, art, real estate and other property. With respect to non-U.S. thrift savings and pension trusts, NTFS may be appointed as trustee and responsible for: (i) payments to beneficiaries of the trust (*i.e.,* employees of the company funding the trust); and (ii) auditing the trust using external auditor(s) and providing annual tax filings (depending on domicile). The Applicant represents that NTFS does not act as a ''qualified professional asset manager'' (QPAM) or otherwise provide investment management services to any accounts subject to ERISA or Code section 4975 and does not act as a fiduciary to any ERISA plan or IRA.

5. NTFS operates based on internal policies and procedures of Northern and is subject to internal audits to ascertain compliance. NTFS is managed by a board of directors, which meets at least quarterly. In addition, the board has delegated certain powers to an Appointment Committee for consideration of new or existing business, a Fiduciary Committee for the review of the companies' fiduciary activities and for consideration of the exercise of discretionary powers by NTFS as trustee and a Risk Committee for consideration and management of risks.

ERISA and Code Prohibited Transactions and PTE 84–14

6. The rules set forth in ERISA section 406 proscribe certain ''prohibited transactions'' between plans and parties in interest with respect to those plans. ERISA section 3(14) defines parties in interest with respect to a plan to include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates.[7] The transactions prohibited by ERISA section 406(a) prohibit that are relevant to this proposed exemption are (1) sales, leases, loans, or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), (2) the use of plan assets by or for the benefit of a party in interest, or (3) a transfer of plan assets to a party in interest.[8]

7. ERISA section 408(a) gives the Department the authority to grant an exemption from such ''prohibited transactions'' if the Department finds an exemption is: (a) administratively feasible for the Department; (b) in the interests of the plan and of its participants and beneficiaries; and (c) protective of the rights of participants and beneficiaries.

8. PTE 84–14 exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in section VI(b) of PTE 84–14) in which a plan has an interest if the investment manager satisfies the definition of ''qualified professional asset manager'' (QPAM) and satisfies additional conditions of the exemption.[9]

[6] In each case, a Covered Plan is an ERISA-covered plan or an IRA with respect to which Northern relies on PTE 84–14, or with respect to which Northern has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14 or the QPAM Exemption). A Covered Plan does not include an ERISA-covered plan or IRA to the extent that Northern has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

[7] Under the Code, such parties, or similar parties, are referred to as ''disqualified persons.''

[8] The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA section 406(b). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries.

[9] PTE 84–14 was recently amended, effective June 17, 2024 to among other things, (1) require a QPAM

PTE 84–14 was developed and granted based on the premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent discretionary manager.[10]

9. Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the definition of a QPAM from utilizing the exemptive relief provided by the QPAM Exemption for itself and its client plans if that entity, an ''affiliate'' thereof, or any direct or indirect five percent or more owner of the QPAM has been either convicted or released from imprisonment, whichever is later, because of criminal activity described in section I(g), or otherwise violates section I(g), within the 10 years immediately preceding a transaction. section I(g) was included in PTE 84–14, in part, based on the Department's expectation that QPAMs, and those who may be in a position to influence the QPAM's policies, must maintain a high standard of integrity.[11]

Investigation for Tax Fraud

10. In 2010 and 2011, French prosecutors opened judicial investigations questioning whether Guy Wildenstein and Alec Daniel Armand Wildenstein (the Wildensteins), heirs to a set of trusts established by family patriarch Daniel Wildenstein, had engaged in money laundering, fraudulent organization of insolvency, forgery and/or tax evasion in connection with their decision not to include trust assets in French tax filings made following Daniel Wildenstein's death in 2001. NTFS, as successor trustee to the trusts, was itself investigated by French prosecutors.[12]

11. On April 9, 2015, the investigating authorities for the District Court of Paris issued an Order of Partial Discharge and Referral before the Criminal Court (the Referral Order). The Referral Order charged the Wildensteins with several counts of tax fraud for failing to disclose, and pay taxes on, assets held in various trusts following the 2001 death of their father, Daniel Wildenstein. One of eight defendants in the Referral Order, NTFS, was charged with violations of Articles 121–2, 121–6, and 121–7 of the French Criminal Code, and Articles 1741 et 1745 of the French General Tax Code for complicity in the Wildensteins' tax fraud based on assets held in trust for certain beneficiaries, including the Wildensteins. The portion of the case relevant to NTFS relates to assets held in two Guernsey trusts for which NTFS served as successor trustee: the ''1989 Sonstrust'' (the Sons Trust) and the ''1989 Davidtrust'' (the David Trust). The trusts include properties located in Kenya, the British Virgin Islands, 740 Madison Avenue and 19 East 64th Street in New York City, shares of Wildenstein and Co Inc., and of various art galleries.

12. As described in the Referral Order, on February 23, 1989, Daniel Wildenstein established two trusts in Bermuda, the Sons Trust and the David Trust with Bermuda Trust Company Limited was appointed as trustee. The Sons Trust was incorporated for the benefit of the children of Daniel Wildenstein, Guy and Alec, and of his second wife, Sylvia Roth-Wildenstein. The David Trust was incorporated for the benefit of the grandchildren of Daniel Wildenstein. Baring Brothers (Guernsey) Limited replaced Bermuda Trust Company Limited as the trustee in 1990, and it was itself replaced as trustee in September 1999 by Baring Trustees (Guernsey) Limited (Baring Trustees). The Applicant states that, only in 2005, following the purchase of Baring Asset Management's Financial Services Group (including Baring Trustees) by the Northern Trust Corp, did Baring Trustees become Northern Trust Fiduciary Services (Guernsey) Limited.

13. On October 21, 2001, Daniel Wildenstein died in Paris. On April 28, 2002, the Wildensteins filed an inheritance tax statement in relation to their father Daniel Wildenstein's estate in France. The statement did not identify the Sons Trust and the David Trust or the assets held by these trusts. The Referral Order provides that the Sons Trust and David Trust, as well as their assets, should have been disclosed in the inheritance tax statement, because the trusts were non-discretionary. The Referral Order provides that that these assets in the Sons Trust and the David Trust are subject to French taxes, and that an inheritance tax would have been imposed on these assets. In this regard, the Referral Order provides:

- The assets placed within the trusts were held by companies. The trusts hold a securities interest in these companies, but the trustee does not have sufficient control of the companies or the assets.
- Daniel Wildenstein was co-trustee, and during his lifetime he could have asked the trustee to distribute all of the trusts' assets to the beneficiaries.
- In addition to naming a trustee, the trust deeds also named an individual to fulfill the role of ''protector'' of the trusts, a Wildenstein family attorney who was financially dependent upon the family.
- The protector permitted certain financial flows debited from the Sons Trust bank account without the trustee's consent, and these money flows were later re-characterized as loans.
- The trusts operated abnormally in some respects and there was some commingling between the trusts' assets and Daniel Wildenstein's assets.
- The trustee's fees were too low in relation to the value of the assets in the trusts, and the assets were actually managed by companies without supervision by the trustee.

14. The French authorities state that their investigation produced sufficient information to allege that NTFS, in Guernsey, beginning in September 1999, aided and abetted tax fraud committed in Paris by Daniel Wildenstein's heirs by concealing a portion of the sums subject to French estate taxes owed by the Wildensteins.[13]

PTE 2016–11

15. The trial commenced on January 4, 2016. Due to the possibility of a conviction that would lead to the loss of the Northern QPAMs' ability to rely on PTE 84–14, the Applicant applied for and received a temporary one year exemption from the Department effective as of the date of judgment of conviction against NTFS for aiding and abetting tax fraud to be entered in France in the District Court of Paris, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12.[14] The Department

to provide a one-time notice to the Department that the QPAM is relying upon the exemption; (2) update the list of crimes enumerated under section I(g) to explicitly include foreign crimes that are substantially equivalent to the listed crimes; (3) expand the circumstances that may lead to ineligibility; and (4) provide a one-year transition period to help Covered Plans avoid or minimize possible negative impacts of terminating or switching QPAMs or adjusting asset management arrangements when a QPAM becomes ineligible pursuant to section I(g) and allow QPAMs a reasonable period of time to seek an individual exemption, if appropriate. See 89 FR 23090 (April 3, 2024).

[10] See 75 FR 38837, 38839 (July 6, 2010).

[11] See 47 FR 56947 (December 21, 1982).

[12] In September 1999, Baring Trustees became the trustee of these two trusts. Baring Trustees was acquired by Northern on March 31, 2005, and became NTFS by change of name effective on August 31, 2005. With respect to these trusts, the Applicant states that NTFS was a directed trustee; as such, it was not involved in the settlement of the trusts and was not involved in any of the family's tax matters.

[13] As described above, the Applicant notes that Baring Trustees was the trustee of the Sons and David Trust until 2005.

[14] PTE 2016–11, 81 FR 75150, 75152 (October 28, 2016). ''Conviction Date'' was defined, in relevant part, to mean the date a judgment was rendered

Continued

granted PTE 2016–11 to protect Covered Plans from the harm that could result from the Northern QPAMs' loss of relief under PTE 84–14 due to the potential conviction of NTFS. Exemptive relief was provided for a period of 12 months from the potential conviction date to provide the Department with sufficient time to determine whether longer-term relief was appropriate.

16. On January 12, 2017, the Criminal Court of Paris acquitted all prosecuted parties, including NTFS. The Paris District Court's verdict was appealed by the French government to the Paris Court of Appeal. Because NTFS was not convicted, the ''Effective Date'' under PTE 2016–11 did not occur. On June 29, 2018, following a retrial in March 2018, the Paris Court of Appeal upheld the District Court's acquittal of all prosecuted parties.[15] The French government appealed again to the Court of Cassation, the highest court in France. In January 2021 the Court of Cassation quashed the appellate court's judgment.[16] From September to October 2023, the case was tried a third time, in front of a different panel of the Paris Court of Appeal.

17. Ultimately, on March 5, 2024, the Paris Court of Appeal rendered a judgment of conviction (the Conviction) against all defendants, including NTFS. NTFS was ordered by the court to pay a fine of €187,500 in conjunction with the judgment. The Applicant represents that the US dollar equivalent of this fine is $203,445 as of March 5, 2024, and $204,197 as of November 5, 2024.[17]

18. When the Paris Court of Appeal rendered a judgment of Conviction against NTFS, PTE 84–14 section I(g) was triggered.[18] PTE 2016–11 was technically inapplicable because its definition of ''Conviction'' referred to the District Court of Paris, instead of the Paris Court of Appeal, and did not include that the judgment of conviction could be entered by another court of competent jurisdiction.[19]

19. On April 4, 2024, the Department issued a technical correction to PTE 2016–11.[20] The technical correction changed the definition of the term ''Conviction'' in PTE 2016–11 by replacing ''the District Court of Paris, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12'' with ''the Court of Appeal, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12 or another court of competent jurisdiction.'' PTE 2016–11, as corrected, is effective for a period of one year from the date of the Conviction, ending March 4, 2025. The one-year exemption gives the Department time to consider whether a longer term (5 years) exemption is appropriate based on the facts of the conviction and to more fully develop the record upon which relief, if any, would be based. Upon the expiration of the one-year exemption on March 4, 2025, the Applicant cannot rely on the QPAM Exemption without this five-year relief, regardless of whether or not the Applicant appeals the judgment of Conviction.

This Exemption Request

20. The Applicant requests exemptive relief that would permit the Northern QPAMs to continue to rely on the relief provided by the QPAM Exemption, notwithstanding the disqualifying conviction, for the remaining nine-year period of disqualification upon the expiration of PTE 2016–11. The Department has determined to propose relief for five years, beginning on March 5, 2025, and ending on March 4, 2030, so that it may reevaluate the effectiveness of the protective conditions for relief as well as whether the QPAMs, and those in position to influence them, have continued to maintain a high standard of integrity.

21. According to the Applicant, the Northern QPAMs' investment management business operations are separate from NTFS, and from the activities of NTFS that are the subject of criminal charges under French law.[21] The Northern QPAMs have dedicated systems, management, risk and compliance officers, that are separate from and independent of NTFS. The investment management businesses of the Northern QPAMs are subject to codes of conduct, and Northern QPAM personnel engage in training, designed to ensure that such businesses understand and abide by their fiduciary duties in accordance with applicable law. The codes of conduct create information barriers designed to prevent employees of the Northern QPAMs from gaining access to inside information that an affiliate may have acquired or developed in connection with the investment banking, treasury services or other investor services business activities. These codes of conduct apply to employees, officers, and directors of Northern QPAMs. The Applicant also maintains an employee hotline for employees to express any concerns of wrongdoing anonymously.

22. The Applicant represents that no NTFS employees (or former employees of Baring Trustees) were investigated or charged, nor were any other corporate entities related to NTFS investigated or charged. The Applicant states that the individual who appears to have been the primary contact for the Wildenstein business after NTFS acquired Baring Trustees was a former employee of Baring Trustees who was not charged in the French proceeding and who left NTFS in January 2006, shortly after the acquisition. Further, the Applicant represents that all personnel involved in working on the Wildenstein accounts, regardless of whether they were implicated in the conduct that became the subject of the Conviction, either left Baring Trustees prior to its acquisition by NTFS in 2005 or shortly thereafter, and none of these persons is employed by NTFS or other Northern affiliates today.

23. The Applicant states that Northern's review of the files has not identified any wrongdoing on the part of former NTFS staff, nor are any current or former NTFS (or Baring Trustees) employees among the six individuals charged by the French prosecutors in connection with the Wildenstein business.

24. The Applicant represents that new policies, procedures and training came into effect since Northern's acquisition of Baring Trustees in 2005. Upon becoming a part of the Northern organization, Baring Trustees was renamed NTFS and became subject to Northern's own internal control procedures designed to prevent improper activities. The Applicant represents that NTFS has complied (and

against NTFS in the District Court of Paris, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12.

[15] The Court of Appeals found that the offenses were time-barred and that there was no legal basis for the offense of tax fraud in relation to the Wildensteins' inheritance.

[16] The Court of Cassation found: (1) that the offenses were not time barred and (2) that there was a legal obligation under French law to declare assets held in certain (but not all) types of trusts. Namely, the legal requirement to declare trust assets applies to trusts where the settlor had not divested themselves of the trust assets during their lifetime.

[17] The Applicant represents that it used the currency converter from Oanda FX Data Services, located at *https://www.oanda.com/currency-converter/en/* to calculate these figures.

[18] On March 5, 2024, NTFS appealed the verdict to the Court of Cassation. According to the Applicant, under French law, until the Conviction is final, there is no conviction, and NTFS continues to be presumed innocent. The Applicant states that the judgment, as well as its effects including the fine and joint and several liability, will be stayed pending the outcome of the appeal. However, under section I(g) of PTE 84–14 as in effect on the date of the Conviction, ''. . . a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.''

[19] See 81 FR 75152 (October 28, 2016).

[20] See 89 FR 23612.

[21] As described below, the conditions for relief provide that no investment management services may be provided by NTFS to ERISA-covered plans or IRAs.

will continue to comply) with all applicable legal and regulatory requirements, including but not limited to requirements potentially linked to the conduct underlying the charges against NTFS.

25. The Applicant further represents that resources dedicated to maintaining risk and compliance procedures have been enhanced significantly since Northern's acquisition of Baring Trustees in 2005. Hundreds of new risk and compliance personnel have been hired by Northern in that period. For example, according to the Applicant, at the time of the acquisition of Baring Trustees (and the Wildenstein relationship) in 2005, Northern had five full-time equivalent employees handling compliance with anti-money laundering (AML) regulations; as of December 31, 2015, that number had increased to 78 full-time equivalent employees.

26. The Applicant represents that it maintains a system of internal controls to ensure ongoing compliance with AML and know-your-client (KYC) related regulations. One of the key controls is the implementation of risk-based, comprehensive customer due diligence policies, procedures and processes for all customers, particularly those that present a high risk for money laundering or terrorist financing. Northern has also adopted Global Minimum Standards for Customer Due Diligence for its clients as a critical part of its Global AML/Economic Sanctions Compliance Program.

27. The Applicant represents that it has new systems for evaluating new clients or acquisitions. Northern represents that it assesses the money laundering and related risks of each new client relationship. Northern represents that it has developed a Global Anti-Money Laundering & Combating the Financing of Terrorism Risk Rating Policy & Methodology to evaluate new client/business relationships and assess their money laundering risk and related risks. In addition, Northern represents that it utilizes a Client Relationship Form to collect the information necessary to assess the client risk rating. Clients will initially be risk rated during the client take-on process and subsequently as the client profile changes.

Hardship to Covered Plans

28. *Overview of loss of QPAM.* The Applicant represents that without the ability to use PTE 84–14 (*i.e.,* the QPAM Exemption), it would be difficult for Northern and its affiliates that currently manage the assets of Covered Plans, collective investment trusts and other commingled funds, on a discretionary basis, to efficiently engage in a variety of routine transactions on behalf of Covered Plan clients with counterparties, because many such counterparties could be a service provider to such Covered Plans. The Applicant states that counterparties are familiar and comfortable with PTE 84–14, as it is generally the most commonly used prohibited transaction exemption for asset managers of ERISA covered Plans or IRAs. The Applicant states that market participants, both clients and counterparties, routinely expect an investment manager of Covered Plan clients to represent that it qualifies as a QPAM—even if such a representation may not technically be required in a particular circumstance or for a particular transaction.

29. The Applicant represents that Northern QPAMs have entered into and could enter into contracts in the future that require the Northern QPAMs to meet the conditions in PTE 84–14 on behalf of Covered Plan clients and on behalf of collective trusts and other funds subject to ERISA. These contracts include contracts entered into by Northern QPAMs on behalf of or as investment adviser for Covered Plans, collective trusts and other funds subject to ERISA for certain outstanding transactions, including, but not limited to the purchase and sale of debt and equity securities (both foreign and domestic, both registered and issued pursuant to Rule 144A or otherwise); asset-backed securities, commodities, real estate financing and leasing arrangements; and certain derivative transactions (*e.g.,* futures, forwards, swaps, and options). The Applicant states that loss of the Northern QPAMs' ability to rely upon PTE 84–14 could cause considerable harm to Covered Plan clients. For example, the Applicant states that counterparties could seek to terminate existing contracts, and certain derivative transactions and other contractual agreements could terminate automatically and immediately without notice or action.

30. In addition, the Applicant represents that its Covered Plan clients that continue to retain the Northern QPAMs could be prohibited from engaging in certain transactions that would be beneficial to such Covered Plan clients on a going forward basis, such as hedging transactions using over-the-counter options or derivatives or certain fixed income transactions (*e.g.,* 144A debt securities).[22] The Applicant states that it is unable to quantify the harm to Covered Plans for not being able to engage in hedging transactions or invest in certain fixed income products. Nonetheless, the Applicant represents that these types of transactions are key to managing both risk and returns of a given investment portfolio.[23] Further, the Applicant states that even if other exemptions were acceptable to such counterparties, the cost of the transaction could increase to reflect the increased risk of compliance with respect to new exemptions that are unfamiliar to counterparties, to the detriment of Covered Plan clients.[24]

31. *Overview of Costs.* The Applicant represents that if the Department does not grant the requested exemption, fiduciaries of Covered Plan clients may seek other investment managers, at significant disruption and cost to the Covered Plan clients and ultimately to their participants and beneficiaries. The

[22] Rule 144A of the Securities Act of 1933, as amended (the ''Securities Act'') provides a safe harbor from the registration requirements of the Securities Act of 1933 for certain private resales of certain securities, including foreign securities, to qualified institutional buyers (QIBs), which generally are large institutional investors that own at least $100 million in investable assets.

[23] The Applicant states that a common reason to engage in hedging transactions and fixed income transactions, and why the inability to engage in these transactions could be specifically harmful to Covered Plans, would be to provide protection against market risk, where fixed income and hedging transactions are used to manage unknown risks of interest rate fluctuation and market volatility for a specific period of time, while providing a specified return. The Applicant represents that it is not able to quantify the potential harms to Covered Plans if relief for these transactions are no longer available, because the market risks are unknown. The Applicant states that another reason to engage in hedging and fixed income transactions would be to address circumstances where there are limited available securities, such as the use of hedging transactions where a Covered Plan has long-term liabilities, and there are insufficient long-term, fixed-income securities available in the marketplace to provide the required returns over the specified period. The Applicant states that it is not able to ascertain which long-term, fixed-income securities will have limited availability at any given time, and thus the Applicant is not able to quantify the potential harms to Covered Plans.

[24] The Applicant represents that historically, counterparties engaging in certain hedging and securitized transactions have required that Covered Plans be able to rely on the QPAM Exemption in connection with such transactions. Further, the Applicant states that generally, counterparties to a Covered Plan have not agreed to allow the Covered Plan to rely on other potentially available prohibited transaction exemptions (*e.g.,* ERISA section 408(b)(17)) because of the perceived risk related to satisfying the conditions of such other prohibited transaction exemptions. The Applicant states that if it were unable to use the QPAM Exemption in such transactions, it expects that the counterparties who view prohibited transaction exemptions (other than the QPAM Exemption) to be riskier could (a) increase the costs of such transactions to reflect the increased compliance risk or (b) not engage in such transactions with Covered Plans at all. The Applicant states that because this harm is counterparty dependent, the Applicant is unable to quantify the potential harm to Covered Plans.

Applicant states that these issues are described below:

• *Time:* The process of transitioning to a new investment manager is typically lengthy and would likely involve numerous steps each of which could last several months—including retaining a consultant, creating the requests for proposal, evaluating requests for proposal, meeting with prospective investment managers, negotiating contracts and ultimately transitioning assets.

• *Costs:* There are various costs involved in transitioning to a new investment manager.[25] Some of those costs are described in more detail below.

• *Investment consultant costs:* Covered Plans generally incur tens of thousands of dollars in consulting fees in connection with searching for and transitioning to a new investment manager. The costs depend on numerous factors, including the consultants retained, as well as the strategy and/or purpose for which they are being retained. Costs are estimated as follows: [26]

○ $25,000 to $75,000 for the replacement of an individual manager or single investment product, or

○ $30,000 to $100,000 for the replacement of an ''outsourced chief investment officer'' (OCIO) or ''manager of managers.'' The Applicant states that Northern currently has 47 OCIO clients that would presumably select another investment manager should the Northern QPAMs no longer be able to rely on the QPAM Exemption

• *Legal costs:* Covered Plans generally incur tens of thousands of dollars in legal fees in connection with transitioning to a new investment manager. The costs depend on numerous factors, including the billing rate, the ability to negotiate and the complexity of the agreement. Assuming a $1,000 blended legal rate (and ignoring any potential alternative fee arrangements), legal costs are estimated to range from $5,000 to $30,000 to transition to a new investment manager. Legal costs with respect to alternative investments can range from $15,0000 to $150,000 per investment, depending on the type of alternative investment and the law firm retained.

• *Investing costs:* The investing costs, or the costs of selling and reinvesting a Covered Plan's assets, differ based on the asset class, as further described below.

32. *Costs Relating to Transitioning an Equity Portfolio.* The Applicant states that trading costs related to an equity portfolio consist of explicit fees and implicit costs. The Applicant states that explicit fees include stamp and exchange fees and commissions. The Applicant also states that implicit costs include bid-ask spreads of assets traded on a principal basis.

33. The Applicant represents that it estimates the costs of transitioning the equity investment portfolio, categorized by geography of equity, as follows: [27]

Geography of equity	Explicit fees		Implicit costs	Total trading-related costs
	Stamp and exchange fees	Commissions	Bid ask spread	
US	$5,426,400	$14,000,000	$178,500,000	$197,926,400
Americas (excluding US)	226,540	701,017	3,619,000	4,546,557
EMEA	460,460	4,265,763	19,162,000	23,888,223
APAC	20,326,130	3,833,220	27,499,000	51,658,350

34. Additionally, the Applicant states that many Covered Plan clients employ a transition manager for large asset movements. The Applicant states that in such cases, the following transition management costs could apply to the following portfolio types: [28]

Class of equity	Costs
US	$230,257,370
Emerging Markets	47,624,262
Global (excluding US)	298,687,332
Global	1,489,917

35. *Costs Relating to Transitioning a Fixed Income Portfolio.* The Applicant states that trading-related costs relating to a fixed income portfolio transition are implicit costs. The Applicant states that it estimates that the costs of transitioning the fixed income investment portfolio categorized by whether the type of fixed income has low trading costs or high trading costs, are as follows:[29]

Class of fixed income [30]	Total trading-related costs
Low Trading Costs Portfolio	$54,520,000
Higher Trading Costs Portfolio	33,250,000

36. *CostsRelating to Transitioning an Alternative Investment (Private Equity and Hedge) Portfolio.* The Applicant states that 50 South provides discretionary asset management services to six ERISA accounts through funds of one and pooled funds subject to ERISA.[31] The Applicant states that each

[25] Notwithstanding that the Applicant's representations regarding certain costs to Covered Plans if Northern QPAMs are unable to rely on PTE 84–14, the proposed exemption would require the Northern QPAMs to indemnify Covered Plans for ''actual losses'' that include transition costs. See discussion below.

[26] The Applicant states that these estimates are based on Northern's general industry knowledge.

[27] The Applicant states that these estimates are its internal calculations based on the estimated size of the notional portfolio multiplied by the estimated basis points. In this regard, the Applicant states that trade-related costs were calculated based on the total asset size of equity collective investment funds of $279 billion. The Applicant states that there is an additional $40 billion of assets invested in Northern QPAMs common funds and through separately managed accounts. In addition, the Applicant states that the ''Total Trading-Related Cost'' figures do not include potential volatility costs, and there could be unknown additional expenses if clients are out of the market for a period of time. Further, the Applicant states that ''Commissions'' are $0.05 per share for U.S. securities and 1.5 basis points for non-U.S. securities.

[28] The Applicant states that these figures are internal calculations based on the estimated size of the notional portfolio multiplied by the estimated basis points. The Applicant states that the ''Costs'' are measured in terms of implementation shortfall, which measures the difference between the decision price and the net execution price (including commissions, fees, etc.).

[29] Trading-related costs were calculated based on the total asset size of fixed income collective investment funds of $127 billion, and by categorizing the portfolios into lower trading costs portfolios with total trading costs below 0.10% and higher trading cost portfolios with total trading costs exceeding 0.10%. The Applicant states that there is an additional $11 billion of Covered Plan assets invested in Northern QPAM's common funds and through separately managed accounts.

[30] The Applicant states that low trading costs portfolios include investment grade bonds and emerging market sovereign debt, while high trading cost portfolios include leverage finance and emerging market corporate debt.

[31] 50 South also provides discretionary and asset management services to other non-ERISA accounts.

of the two largest ERISA accounts managed by 50 South has $150 million attributable to Covered Plan clients. In total, the Applicant states that Covered Plan clients own $519 million of assets under management within these 50 South-managed ERISA accounts.

37. The Applicant states that Covered Plan clients expend between six and eighteen months to select alternative investment managers. When new investment managers are finally selected, Covered Plans may be forced to sell their holdings in the Applicant's funds on the secondary market. The Applicant states that there are unique transaction costs relating to private equity fund-of-funds that are sold on the secondary market. The Applicant states that because interests in private funds are not available on the public markets, Covered Plans typically engage specialized investment banks to run auction processes to sell private equity holdings. The Applicant states that the use of an investment bank ensures transparent price discovery and price maximization for the assets, consistent with the fiduciary requirements for Covered Plans. The Applicant states that investment banks typically charge an advisory fee equal to 50 to 200 basis points of the total exposure sold on the secondary market, which could result in costs ranging from $2,121,708 to $8,486,830 for Covered Plan clients investing in 50 South's applicable funds. The Applicant states that in addition to the direct transaction expenses typically associated with a secondary sale, sellers of private equity fund-of-funds typically experience a 22.5% to 30% discount on net asset value for the early liquidation, which could result in an economic loss ranging from $49,319,123 to $65,758,831 for Covered Plan clients investing in 50 South's applicable funds.

38. *Other Disruptions:* The Applicant states that in some cases, Covered Plan clients may find it difficult to transition to a new investment manager, specifically with respect to certain strategies. The Applicant states that below are examples of such disruptions.

- *Pooled Funds:* The Northern QPAMs' inability to rely upon PTE 84–14 could result in significant, unplanned redemptions from pooled funds, which would in turn frustrate the QPAMs' efforts to effectively manage the pooled funds' assets and harm remaining plan investors by increasing the expense ratios of such pooled funds. In this regard, the Applicant states that pooled funds incur both fixed and variable expenses. The Applicant represents that unlike variable expenses, fixed expenses (*e.g.,* accounting, regulatory and legal fees) remain the same regardless of the amount of assets in the pooled fund. The Applicant states that such fixed expenses are shared amongst the investors in the Covered Plans. Therefore, the Applicant states that if some, but not all, Covered Plan investors seek to withdraw from a pooled fund, the remaining investors will bear a greater portion of the fixed expenses. The Applicant states that because it cannot anticipate the extent to which Covered Plan investors will withdraw, it cannot quantify this harm with specificity.
- *Opening Custody Accounts:* When an investment manager is hired to manage a separately managed account, it will need to open custody accounts in applicable jurisdictions. There are several jurisdictions where it can take a considerable amount of time to open custody accounts (*e.g.,* India). There are other jurisdictions where it may not be possible to open a new custody account. In this regard, the Applicant states that during the time period in which a Covered Plan is opening a new custody account (the lapse period), such Covered Plan may not be able to be invested in accordance with the Covered Plan's chosen investment strategy. The Applicant states that the potential harm cannot be quantified because it would require the Applicant to predict and compare the investment returns of (x) the securities that the Covered Plan actually invests during the lapse period, with (y) the alternative securities in which the Covered Plan desired to invest during the lapse period. The Applicant state that these are forward-looking variables over which the Applicant has no control.

Department's Request for Comment and Notes Regarding Harms to Plans in Paragraphs 31 Through 38

The Department requests the Applicant to provide a clear description regarding their estimates of costs to Covered Plans in its comment letter. In this regard, the Applicant should describe:

(1) the amount of Covered Plan assets that are likely to be subject to the costs described above and an explanation of the Applicant's assumptions or methodologies in connection with such figures. For example: ''50% of the Covered Plan assets will be likely to incur such costs because. . . .''

(2) the likelihood of the costs occurring, for each of the transition costs described above. For example: with respect to Covered Plans' Alternative Investments, how likely are Covered Plans to leave Northern Trust for a different manager; with respect to violating representations as to QPAM status in an offering document, the Applicant should provide information regarding how likely that is to occur; etc.

(3) the circumstances under which the transition costs described in the tables above are being incurred (*e.g.,* are these transition costs that the Applicant contends would be incurred by Covered Plans to remedy contractual violations due to loss of QPAM status, costs due to Covered Plans seeking to use a different investment manager that can rely on QPAM, etc.).

(4) the extent to which any of the asserted costs reflect the QPAMs' imposition of additional charges or fees on Covered Plans resulting from the loss of QPAM status, and the cause of such additional charges or fees.

(5) an explanation of the extent to which the costs described herein are not likely to be covered by the QPAMs indemnification obligations under section III(j)(2), described in more detail below, and an explanation why such costs are not attributable to the Applicant's violation of exemption conditions.

Condition (j)(2) of the proposed exemption requires Northern QPAMs to ''indemnify and hold harmless'' Covered Plans for ''actual losses resulting directly from the Northern QPAM's violation of any conditions of this exemption, an Northern QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the Northern QPAM; or any claim arising out of the failure of such Northern QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of section I(g) of PTE 84–14 other than the Conviction.'' Furthermore, the Department notes that, to the extent Covered Plans ''feel forced'' to transition to new asset managers because the Northern QPAMs can no longer rely on PTE 84–14, the liquidation and additional costs arising from the transition constitute actual losses resulting directly from the failure of such QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of violation of section I(g) of PTE 84–14. If a plan's fiduciary is compelled to replace a Northern asset manager as a result of a violation of section I(g) and the asset manager's loss of QPAM status, the affected plan is entitled to indemnification of its associated losses, including the transitional expenses necessary to effectuate the switch to a qualified QPAM.

The Exemption's Protective Conditions

39. This proposed exemption contains conditions that are similar to the conditions in the Department's recent exemptions from the prohibitions of section I(g) of PTE 84–14. The Department is able to make its findings under ERISA section 408(a) only with the imposition of these conditions, and only if every condition is adhered to in good faith by the Applicant and the Northern QPAMs.[32] Several of this proposed exemption's conditions are designed to ensure that the Northern QPAMs were not involved in the conduct that gave rise to the Conviction. Accordingly, this proposal does not provide prohibited transaction relief if the Northern QPAMs knew of, had reason to know of, participated in, approved of, or profited from the conduct that gave rise to the Conviction.[33] No other party engaged on behalf of the Northern QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets may have known or have had reason to know of, and did not participate in, the criminal conduct that is the subject of the Conviction.[34] Nor is relief available if a Northern QPAM exercised any authority over plan assets in a manner that it knew or should have known would further the criminal conduct that is the subject of the Conviction or cause the Northern QPAM or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction.

40. Further, the Northern QPAMs may not employ or knowingly engage any of the individuals that participated in the criminal conduct attributable to the Conviction. [35] The Northern QPAMs (including their officers, directors, agents other than NTFS, and employees of such Northern QPAMs), any other party engaged on behalf of the Northern QPAMs who had responsibility for, or exercised authority in connection with, the management of plan assets, must not have received direct compensation or knowingly received indirect compensation in connection with the criminal conduct that is the subject of the Conviction.

41. The proposal further provides that no Northern QPAM will use its authority or influence to direct an ''investment fund'' that is subject to ERISA or the Code and managed by such Northern QPAM in reliance on PTE 84–14, or with respect to which a Northern QPAM has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on PTE 84–14, to enter into any transaction with NTFS to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption.

42. If the Department grants this exemption, it will terminate immediately if an affiliate of the Northern QPAM (as defined in section VI(d) of PTE 84–14) violates section I(g) of PTE 84–14 (other than with respect to the Conviction). Also, NTFS may not act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii), or Code section 4975(e)(3)(A) and (C), with respect to Covered Plan assets.

43. The proposed exemption requires each Northern QPAM to implement and follow certain written policies and (the Policies). The Policies must require and be reasonably designed to ensure, among other things, that: (i) the Northern QPAMs' asset management decisions are conducted independently of the management and business activities of Northern, including NTFS and Northern's non-asset management affiliates; (ii) the Northern QPAMs fully comply with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan,; (iii) the Northern QPAMs do not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans; (iv) any filings or statements made by the Northern QPAMs to regulators on behalf of or in relation to Covered Plans are materially accurate and complete; (v) the Northern QPAMs do not make material misrepresentations or omit material information in communications with such regulators with respect to Covered Plans; (vi) the Northern QPAMs comply with the terms of the exemption; and (vii) any violation of or failure to comply with any of these items is corrected promptly upon discovery, and any such violation or compliance failure not so corrected must be reported in writing to appropriate corporate officers, the head of compliance and the QPAM's general counsel (or their functional equivalent) of the relevant Northern QPAM, and an appropriate fiduciary of any affected Covered Plan where such fiduciary is independent of Northern.[36]

44. This proposed exemption mandates training (Training) conducted at least annually during the Exemption Period. In this regard, all relevant Northern QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel must be trained during the Exemption Period. Among other things, the Training must cover at a minimum, the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the exemption conditions (including any loss of the exemptive relief provided herein) and the requirement for prompt reporting of wrongdoing. The Training may be conducted electronically and must be conducted by a professional who has been prudently selected and has appropriate technical training and proficiency with ERISA and the Code.

45. Under this proposed exemption each Northern QPAM must submit to an audit conducted every two years by an independent auditor, which covers the prior consecutive 12 months. Among other things, the auditor must test a sample of each Northern QPAM's transactions involving Covered Plans that are sufficient in size, number and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training. The auditor's conclusions cannot be based solely on the written report created by the Compliance Officer (the Exemption Report), described below, in lieu of independent determinations and testing performed by the auditor.

46. The written report issued by the auditor (the Audit Report) must be certified by the respective general counsel or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the Northern QPAM with respect to which the Audit Report applies. A copy of the

[32] This preamble contains a general description of the conditions for the benefit of the reader. See the operative conditions below for more detail. In the event of any inconsistency between the description in this preamble and the operative conditions contained below, the operative conditions are controlling.

[33] For clarity, references to the Northern QPAMs include their officers, directors, agents other than NTFS, and employees of such QPAMs.

[34] ''Participate in'' for purposes of the conditions refers not only to active participation in the misconduct of NTFS that is the subject of the Conviction, but also includes the knowing or tacit approval of the misconduct underlying the Conviction or knowledge of such conduct without taking active steps to prohibit it, including reporting the conduct to such individual's supervisors, and to Northern's board of directors.

[35] The Department expects the Northern QPAMs to rigorously ensure that the individuals associated with the criminal conduct of NTFS will not be employed or knowingly engaged by such QPAMs.

[36] A Northern QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements described herein.

Audit Report must be provided to Northern's Board of Directors. A senior executive officer who has a direct reporting line to Northern's highest ranking legal compliance officer must review the Audit Report for each Northern QPAM and certify in writing and under penalty of perjury that such officer has reviewed each Audit Report.

47. This proposed exemption requires the Northern QPAM to agree and warrant with respect to any arrangement, agreement, or contract between a Northern QPAM and a Covered Plan that, throughout the effective period of the exemption, the Northern QPAM will: (i) comply with ERISA and the Code, as applicable with respect to the Covered Plan; (ii) refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions); and (iii) comply with the standards of prudence and loyalty set forth in ERISA section 404 with respect to each such ERISA-covered plan. Each Northern QPAM must also agree and warrant to indemnify and hold harmless the Covered Plan for any actual losses resulting directly from any of the following: (a) a Northern QPAM's violation of any conditions of this exemption; (b) a Northern QPAM's violation of ERISA's fiduciary duties and/or the prohibited transaction provisions of ERISA and the Code as applicable; (c) a breach of contract by the Northern QPAM; or (d) any claim arising out of the failure of the Northern QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of section I(g) of the exemption other than the Conviction. This condition applies to actual losses caused by the Northern QPAM, including but not limited to losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 because of a Northern QPAM's inability to rely upon the relief in the QPAM Exemption. The definition of ''actual losses'' used in this proposed exemption allows fiduciaries of Covered Plans to prudently manage and make the best decisions on behalf of their plans without needing to consider the costs caused by a Northern QPAM's or its affiliate's misconduct, including costs associated with unwinding transactions and transitioning plan assets to a new asset manager, because these costs will be borne by the Northern QPAM and not the Covered Plan.[37]

48. The proposed exemption also requires the Northern QPAM to agree and warrant with respect to any arrangement, agreement, or contract between a Northern QPAM and a Covered Plan that it will not require or cause the Covered Plan to waive, limit, or qualify the liability of the Northern QPAM for violating ERISA or the Code or engaging in prohibited transactions; restrict a Covered Plan from terminating or withdrawing from its arrangement with the Northern QPAM, with the exception of reasonable restrictions specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors; impose fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees specifically designed to prevent abusive investment practices or ensure equitable treatment of all investors in a pooled fund; or generally include exculpatory provisions disclaiming or otherwise limiting the liability of the Northern QPAM for a violation of such agreement's terms.

49. This proposed exemption contains specific notice requirements. Each Northern QPAM must provide a notice regarding the proposed exemption and a separate summary describing the facts that led to each Conviction (the Summary), which must be submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a Northern QPAM. The notice, Summary, and Statement must be provided before or contemporaneously with the client's receipt of a written asset management agreement from the Northern QPAM. If the Department grants an exemption, the clients must receive a **Federal Register** copy of the notice of final exemption within sixty (60) days of this exemption's effective date. The notice may be delivered electronically (including by an email containing a link to this exemption).

50. The proposed exemption requires each Northern QPAM to maintain records necessary to demonstrate that the exemption conditions have been met for six (6) years following the date of any transaction for which the Northern QPAM relies upon the relief provided in the exemption. The proposed exemption mandates that each Northern QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an exemption review (the Exemption Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. The Compliance Officer must be a professional with extensive relevant experience with a reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management for the applicable Northern QPAM. At a minimum, the Exemption Review must include review of the following items: (i) any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer during the previous year; (ii) any material change in the relevant business activities of the Northern QPAMs; and (iii) any change to ERISA, the Code, or regulations that may be applicable to the activities of the Northern QPAMs.

51. The Compliance Officer must prepare a written report (*i.e.,* the Exemption Report) that (A) summarizes their material activities during the effective period of the exemption; (B) sets forth any instance of noncompliance discovered, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions in response to such recommendations. In each Exemption Report, the Compliance Officer must certify in writing that, among other things, to the best of their knowledge at the time, the report is accurate, and note whether the Northern QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any instances of noncompliance.

52. The Exemption Report must be (i) provided to the appropriate corporate officers of each Northern QPAM to which such report relates and to the head of compliance and the general counsel (or their functional equivalent) of the relevant Northern QPAM, and (ii) made unconditionally available to the independent auditor. The Exemption Review, including the Compliance

[37] The Department notes that with respect to the notice of obligations requirement in section III(j)(7), all Covered Plans must receive a notice that includes the definition of actual losses as provided in section III(j)(2) of this proposed exemption.

Officer's written Exemption Report, must be completed within 90 days following the end of the period to which it relates. [38]

53. The proposed exemption also mandates that, within 60 days of the effective date of the exemption, each Northern QPAM clearly and promptly informs Covered Plan clients of their right to obtain a copy of the Policies or a description (the Summary Policies) which accurately summarizes key components of the Northern QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within 180 days following the end of the calendar year during which the Policies were changed.[39] With respect to this requirement, the description may be continuously maintained on a website, provided that such website's link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan.

54. Each Northern QPAM must impose its internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the Conviction, and each Northern QPAM must provide the Department with the records necessary to demonstrate that each condition of this exemption has been met within 30 days of a request by the Department. With respect to an asset manager that becomes an Northern QPAM after the effective date of the exemption by virtue of being acquired (in whole or in part) by Northern or a subsidiary or affiliate of Northern (a ''newly-acquired Northern QPAM''), the newly-acquired Northern QPAM would not be precluded from relying on the exemptive relief provided by PTE 84–14 notwithstanding the Conviction as of the closing date for the acquisition; however, the operative terms of the exemption shall not apply to the newly-acquired Northern QPAM until a date that is six (6) months after the closing date for the acquisition. To that end, the newly acquired Northern QPAM will initially submit to an audit pursuant to section III(i) of this exemption as of the first audit period that begins following the closing date for the acquisition. The period covered by the audit must begin on the date on which the Northern QPAM was acquired.

55. Finally, all the material facts and representations set forth in the Summary of Facts and Representations must be true and accurate at all times.

Statutory Findings—Administratively Feasible

56. The Department has tentatively determined that this proposed exemption would be administratively feasible because, among other things, a qualified independent auditor would be required to perform in-depth audit(s) covering each Northern QPAM's compliance with the exemption, and draft a corresponding written audit report that would be available to the public. The Department notes that the independent audit will provide an incentive for and a measure of compliance with the exemption conditions, while reducing the immediate need for review and oversight by the Department.

Statutory Findings—In the Interests of the Covered Plans

57. The Department has tentatively determined that the proposed exemption would be in the interests of the participants and beneficiaries of each affected Covered Plan because of the likely costs the plans would incur if the exemption were denied and the benefits of permitting plans to continue to rely upon the Northern QPAM's services with the additional protections set forth in this exemption.

Statutory Findings—Protective of the Rights of Participants of the Covered Plans

58. The Department has tentatively determined that this proposed exemption would be protective of Covered Plans. The exemption would be subject to a suite of protective conditions that the Department has determined provide ample protections for the rights of Covered Plans and their participants and beneficiaries that are managed by QPAMs that have experienced a disqualifying event similar to the one experienced by the Northern QPAMs. The Department notes, however, that in the event the Northern QPAMs become subject to another disqualifying event under PTE 84–14, the Department would be forced to reconsider whether relief is appropriate for the Northern QPAMs, and whether the conditions for relief hereunder are/were adequate to protect Covered Plans. The Department also takes note of the Applicant's representation that the criminal conduct relating to the Wildensteins occurred prior to the acquisition of Baring Trustees by Northern Trust, and that Baring Trustees, currently known as NTFS, is now subject to Northern Trust's policies and compliance procedures. The Department further notes the Applicant's representation that no one involved in taking on the Wildenstein business or that had any dealings with such matters at the time of the misconduct described in the Conviction works for NTFS. In addition, under this proposed exemption, exemptive relief would begin on March 5, 2025, and it has a limited prospective term of five (5) years, which permits the Department to re-evaluate the Northern QPAMs' adherence to the condition for relief under this exemption, and to determine whether or not to continue to provide the relief hereunder.

Summary

59. Given the revised and new conditions described above, the Department has tentatively determined that the relief sought by the Applicants satisfies the statutory requirements for an exemption under ERISA section 408(a) and Code section 4975(c)(2). The proposed exemption provides relief from certain of the restrictions set forth in section 406 and 407 of ERISA. The proposed exemption does not provide relief from any other violation of law, including any criminal conviction not expressly described herein. Any criminal conviction not expressly described herein, or other violation of section I(g) of PTE 84–14 that is attributable to the Applicant would result in the applicant's loss of this exemption.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within fifteen (15) days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner approved by the Department and will contain the documents described therein and a supplemental statement required by 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing

[38] The Department notes that section I(l) of PTE 2016–11 required Northern to disclose to the Department any Deferred Prosecution Agreement (DPA) or a Non-Prosecution Agreement (NPA) with the U.S. Department of Justice, entered into by Northern or any of its affiliates in connection with conduct described in section I(g) of PTE 84–14 and/or ERISA section 411; and provide the Department any information requested by the Department, as permitted by law. The Department has determined not to include the same condition in this proposed exemption, because a DPA or NPA is now included in the list of disqualifying events under section I(g) of PTE 84–14, effective as of June 17, 2024.

[39] If the Applicant satisfies this disclosure requirement through Summary Policies, changes to the Policies will not require new disclosure to Covered Plans unless the Summary Policies are no longer accurate because of the changes.

must be received by the Department within forty-five (45) days of the date of publication of this proposed exemption in the **Federal Register**. All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan and its participants and beneficiaries and in a prudent manner in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA section 408(a) and/or Code section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The exemption would be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction; and

(4) The exemption would be subject to the express condition that the material facts and representations contained in the Application are true and complete at all times and that the Application accurately describes all material terms of the transactions which are the subject of the exemption.

Proposed Exemption

Based on the facts and representations set forth in the application for exemption, the Department is proposing to grant an exemption under the authority of ERISA section 408(a) and Code section 4975(c)(2) in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

Section I. Definitions

(a) The term ''Conviction'' means the judgment of conviction against NTFS for aiding and abetting tax fraud entered in France in the Court of Appeal, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12, or to be entered in another court of competent jurisdiction;

(b) The term ''Covered Plan'' means a plan subject to Part IV of Title I of ERISA (an ''ERISA-covered plan'') or a plan subject to Code section 4975 (an ''IRA''), in each case, with respect to which Northern relies on PTE 84–14, or with respect to which Northern has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14 or the QPAM Exemption). A Covered Plan does not include an ERISA-covered plan or IRA to the extent that Northern has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA;

(c) The term ''Exemption Period'' means a period of five years, beginning on March 5, 2025 and ending on March 4, 2030;

(d) The term ''Northern'' means Northern Trust Corporation, together with its current and future affiliates;

(e) The term ''Northern QPAM'' means a ''qualified professional asset manager'' (as defined in PTE 84–14 section VI(a)) [40] that relies on the relief provided by PTE 84–14 and with respect to which NTFS is a current or future ''affiliate'' (as defined in PTE 84–14 section VI(d)); and the Northern QPAMs do not and must not include NTFS.

(f) The term ''NTFS'' means Northern Trust Fiduciary Services (Guernsey) ltd., an affiliate'' of Northern (as defined in PTE 84–14 section VI(c)) located in Guernsey;

(g) The terms ''participate,'' and ''participate in,'' when used to describe a person's role in the criminal conduct described in this exemption, refer not only to a person's active participation in the misconduct of NTFS that is the subject of the Conviction, but also includes the knowing or tacit approval of the misconduct underlying the Conviction or knowledge of such conduct without taking active steps to prohibit it, including reporting the conduct to such individual's supervisors, and to Northern's board of directors.

(h) Wherever found, any reference in this exemption to ''the best knowledge'' of a party, ''best of [a party's] knowledge,'' and similar formulations of the ''best knowledge'' standard, will be deemed to mean the actual knowledge of the party and the knowledge which they would have had if they had conducted their reasonable due diligence required under the circumstances into the relevant subject matter. If a condition of the exemption requires an individual to provide certification pursuant to their ''best knowledge,'' then such individual, in order to make such certification, must perform their reasonable due diligence required under the circumstances to determine whether the information such individual is certifying is complete and accurate in all respects. Furthermore, with respect to an entity other than a natural person, the ''best knowledge'' of the entity includes matters that are known to the directors and officers of the entity or should be known to such individuals upon the exercise of such individuals' due diligence required under the circumstances.

Section II. Covered Transactions

If the proposed exemption is granted, certain entities with specified relationships to NTFS (*i.e.,* the Northern QPAMs, as defined above) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14),[41] notwithstanding the

[40] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM

[41] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (October 10, 1985), as amended at 70

Continued

Conviction (as defined above),[42] during the Exemption Period, provided that the conditions in section III are satisfied.

Section III. Conditions

(a) The Northern QPAMs (including their officers, directors, agents other than NTFS, and employees of such Northern QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of NTFS that is the subject of the Conviction. Further, any other party engaged on behalf of the Northern QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the Conviction;

(b) The Northern QPAMs (including their officers, directors, agents other than NTFS, and employees of such Northern QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of the Northern QPAMs who had responsibility for, or exercised authority in connection with, the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction;

(c) The Northern QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction;

(d) At all times during the Exemption Period, no Northern QPAM will use its authority or influence to direct an ''investment fund,'' (as defined in PTE 84–14 section VI(b)) that is subject to ERISA or the Code and managed by such Northern QPAM in reliance on PTE 84–14, or with respect to which a Northern QPAM has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on the QPAM Exemption, to enter into any transaction with NTFS or engage NTFS to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the Northern QPAMs to satisfy PTE 84–14 section I(g) arose solely from the Conviction;

(f) No Northern QPAM exercised authority over the assets of any Covered Plan in a manner that it knew or should have known would further the criminal conduct that is the subject of the Conviction or cause a Northern QPAM or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) NTFS has not provided and will not provide discretionary asset management services to Covered Plans, nor will it otherwise act as a fiduciary within the meaning of ERISA section 3(21)A)(i) or (iii), or Code section 4975(e)(3)(A) and (C), with respect to Covered Plan assets;

(h)(1) Each Northern QPAM will continue to implement, maintain, adjust (to the extent necessary), and follow written policies (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of each Northern QPAM are conducted independently of the management and business activities of Northern, including NTFS and Northern's non-asset management affiliates;

(ii) The Northern QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, and does not knowingly participate in any violations of these duties and provisions with respect to Covered Plans;

(iii) The Northern QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the Northern QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of the Northern QPAM's knowledge at the time, the Northern QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) The Northern QPAM complies with the terms of this exemption, if granted; and

(vii) Any violation of, or failure to comply with, an item in subparagraph (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant Northern QPAM, and an appropriate fiduciary of any affected Covered Plan where such fiduciary is independent of Northern; however, with respect to any Covered Plan sponsored by an ''affiliate'' (as defined in PTE 84–14 section VI(d)) of Northern or beneficially owned by an employee of Northern or its affiliates, such fiduciary does not need to be independent of Northern. A Northern QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each Northern QPAM must continue to implement a program of training (the Training), conducted at least annually during the Exemption Period, for all relevant Northern QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel during the Exemption Period. The Training may be conducted electronically and must: (a) be set forth in the Policies and at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this temporary exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; (b) be conducted by a professional who has been prudently selected and who has appropriate training and proficiency with ERISA and the Code to perform the tasks required by this exemption; and (c) be verified, through in-training knowledge checks, ''graduation'' tests, and/or other technological tools designed to confirm that personnel fully and in good faith participate in the Training.

(i)(1) Each Northern QPAM must submit to an audit conducted every two years by an independent auditor who has been prudently selected and who

FR 49305(August 23, 2005), as amended at 75 FR 38837 (July 6, 2010), and as amended at 89 FR 23090 (April 3, 2024).

[42] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including income tax evasion, and aiding and abetting tax evasion.''

has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of and each Northern QPAM's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated in the Policies. Each audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from March 5, 2025 (at the end of the period of protection granted under PTE 2016–11), through March 4, 2026, and must be completed by September 4, 2026. The second audit must cover the period from March 5, 2027, through March 4, 2028, and must be completed by September 4, 2028. The third audit must cover the period from March 5, 2029, through March 4, 2030, and must be completed by September 4, 2030;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, each Northern QPAM and, if applicable, Northern, will grant the auditor unconditional access to its businesses, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access will be provided only to the extent that it is not prevented by State or Federal statute, or involves communications subject to attorney client privilege and may be limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each Northern QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each Northern QPAM's operational compliance with the Policies and Training conditions. In this regard, the auditor must test, for each QPAM, a sample of the QPAM's transactions involving Covered Plans. The sample must include transactions that are sufficient in size, number and nature to afford the auditor a reasonable basis to determine the QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period for completing the audit described in section III(i)(1), the auditor must issue a written report (the Audit Report) to Northern and the Northern QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. At its discretion, the auditor may issue a single consolidated Audit Report that covers all the Northern QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) the adequacy of each Northern QPAM's Policies and Training; each Northern QPAM's compliance with the Policies and Training conditions; the need, if any, to strengthen such Policies and Training; and any instance of the respective Northern QPAM's noncompliance with the written Policies and Training described in section III(h) above. The Northern QPAM must promptly address any noncompliance and promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Northern QPAM. Any action taken, or the plan of action to be taken, by the respective Northern QPAM must be included in an addendum to the Audit Report (and such addendum must be completed before the certification described in section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time the Audit Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective Northern QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a Northern QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular Northern QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the compliance officer (Compliance Officer), as described in section III(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor, as required by section III(i)(3) and (4) above; and

(ii) The adequacy of the most recent Exemption Review described in section III(m);

(6) The auditor must notify the respective Northern QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the general counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the Northern QPAM with respect to which the Audit Report applies must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption and that to the best of such officer's knowledge at the time, the Northern QPAM has addressed, corrected or remedied any noncompliance and inadequacy, or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. The certification must also include the signatory's determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person who participated in the criminal conduct that is the subject of the Conviction may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct underlying the Conviction;

(8) Northern's Board of Directors must be provided a copy of each Audit Report, and a senior executive officer with a direct reporting line to the highest-ranking legal compliance officer of Northern must review the Audit Report for each Northern QPAM and certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report. With respect to this subsection (8), such certifying senior executive officer must not have known of, had reason to know of, or participated in, any misconduct underlying the Conviction, unless such person took active documented steps to stop the misconduct underlying the Conviction;

(9) Each Northern QPAM provides its certified Audit Report, by electronic mail to *e-oed@dol.gov.* This delivery must take place no later than forty-five (45) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each Northern QPAM must make its Audit Report unconditionally available, electronically or otherwise, for

examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each Northern QPAM and the auditor must submit to *e-oed@dol.gov* any engagement agreement(s) executed pursuant to the engagement of the auditor under this exemption no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request access to all the workpapers it created and utilized in the course of the audit, for inspection and review, provided such access and inspection is otherwise permitted by law; and

(12) Northern must notify the Department of a change in the independent auditor no later than 60 days after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and Northern;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a Northern QPAM and a Covered Plan, each Northern QPAM agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions in accordance with applicable rules under ERISA and the Code); and to comply with the standards of prudence and loyalty set forth in ERISA section 404 with respect to each such Covered Plan, to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from the Northern QPAM's violation of any conditions of this exemption, a Northern QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the Northern QPAM; or any claim arising out of the failure of such Northern QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of section I(g) of PTE 84–14 other than the Conviction. Actual losses include, but are not limited to, losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a Northern QPAM's inability to rely upon the relief in the QPAM Exemption.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the Northern QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the Northern QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any of these arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and such restrictions must be applicable to all such investors in the pooled fund on equal terms and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event the withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting the liability of the Northern QPAM for a violation of such agreement's terms. To the extent consistent with ERISA section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of the Northern QPAM and its affiliates, or damages arising from acts outside the control of the Northern QPAM; and

(7) Within 60 calendar days after this exemption's effective date, each Northern QPAM must provide a notice of its obligations under this section III(j) to each Covered Plan, including for avoidance of doubt the definition of actual losses as provided in clause (2) above. For Covered Plans that enter into a written asset or investment management agreement with a Northern QPAM on or after 60 calendar days from this exemption's effective date, the Northern QPAM must agree to its obligations under this section III(j) in an updated investment management agreement between the Northern QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–11 that meets the terms of this condition. This condition will also be met where the Northern QPAM has already agreed to the same obligations required by this section III(j) in an updated investment management agreement between the Northern QPAM and a Covered Plan.

(k) Within 60 days after the effective date of this exemption, each Northern QPAM provides notice of the exemption as published in the **Federal Register**, along with a separate summary describing the facts that led to the Conviction (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14 to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with the Northern QPAM. All prospective Covered Plan clients that enter into a written asset or investment management agreement with the Northern QPAM (including a participation or subscription agreement in a pooled fund managed by an Northern QPAM) after a date that is 60 days after the effective date of this exemption must receive must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the Northern QPAM (for avoidance of doubt, all Covered Plan clients of an Northern QPAM during the Exemption Period must receive the disclosures described in this section by the later of (i) 60 days after the effective date of the exemption or (ii) the date that a Covered Plan client enters into a written asset or investment management agreement with an Northern QPAM). Disclosures required under this paragraph (k) may be delivered electronically (including by an email that has a link to this exemption.

Notwithstanding the above paragraph, a Northern QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement;

(l) The Northern QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exceptions of the violations of PTE 84–14 section I(g) that are attributable to the Conviction. If an affiliate of the Northern QPAM (as defined in section VI(d) of PTE 84–14) is convicted of a crime described in PTE 84–14 section I(g) (other than the Conviction) during the Exemption Period, this exemption will terminate immediately;

(m)(1) Within 60 days after the date of publication of the exemption, each Northern QPAM must designate a senior compliance officer (*i.e.,* the Compliance Officer) to be responsible for compliance with the Policies and Training requirements described herein. No person who participated in the criminal conduct that is the subject of the Conviction, may be involved with the designation or responsibilities required by this condition unless the person took active documented steps to stop the misconduct. The Compliance Officer must conduct a review of each twelve-month period comprising the Exemption Period (each an Exemption Review), to determine the adequacy and effectiveness of the Northern QPAM's implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management.

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The Exemption Review must include a review of the Northern QPAM's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the twelve-month period under review; the most recent Audit Report issued pursuant to this exemption; any material change in the relevant business activities of the Northern QPAM; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the Northern QPAM;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes their material activities during the twelve-month period under review; (B) sets forth any instance of noncompliance discovered during the twelve-month period under review, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions in response to such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of their knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the twelve-month period under review and any prior period, and any related correction taken to date, has been identified in the Exemption Report; and (D) the Northern QPAM complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of the Northern QPAM; the head of compliance and the general counsel (or their functional equivalent) of the Northern QPAM; and must be made unconditionally available to the independent auditor described above; and

(v) The Exemption Review, including the Compliance Officer's written Report, must be completed within 90 days following the end of the period to which it relates;

(n) Each Northern QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which the Northern QPAM relies upon the relief in the exemption;

(o) Within 60 days after the effective date of the exemption, each Northern QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of such Northern QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within 180 days following the end of the calendar year during which the Policies were changed. If the Northern QPAM meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan;

(q) A Northern QPAM will not fail to meet the terms of this exemption, solely because a different Northern QPAM fails to satisfy a condition for relief under this exemption, described in sections III(c), (d), (h), (i), (j), (k), (l), (m), (n), and (o) or if the independent auditor described in section III(i) fails to comply with a provision of the exemption, other than the requirement described in section III(i)(11), provided that such failure did not result from any actions or inactions of Northern or its affiliates.

(r) Each Northern QPAM imposes internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the Conviction;

(s) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate at all times; and

(t) With respect to an asset manager that becomes an Northern QPAM after the effective date of the exemption by virtue of being acquired (in whole or in part) by Northern or a subsidiary or affiliate of Northern (a ''newly-acquired Northern QPAM''), the newly-acquired Northern QPAM would not be precluded from relying on the exemptive relief provided by PTE 84–14 notwithstanding the Conviction as of the closing date for the acquisition; however, the operative terms of the exemption shall not apply to the newly-acquired Northern QPAM until a date that is six (6) months after the closing date for the acquisition. To that end, the newly acquired Northern QPAM will initially submit to an audit pursuant to section III(i) of this exemption as of the first audit period that begins following the closing date for the acquisition. The

period covered by the audit must begin on the date on which the Northern QPAM was acquired;

(t) Relief in this exemption will terminate on the date that is 12 months following the date that a U.S. regulatory authority makes a final decision that Northern or an affiliate failed to comply in all material respects with any requirement imposed by such regulatory authority in connection with the Conviction; and

(u) Each Northern QPAM must provide the Department with the records necessary to demonstrate that each condition of this exemption has been met within 30 days of a request by the Department.

Exemption Date: This exemption will be in effect beginning on March 5, 2025, and ending on March 4, 2030.

Signed at Washington, DC.

George Christopher Cosby,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2025–01244 Filed 1–17–25; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Senior Community Service Employment Program Older Workers Study Impact Evaluation

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Chief Evaluation Office (CEO)-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 February 20, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Senior Community Service Employment Program (SCSEP), administered by the U.S. Department of Labor, aims to help low-income seniors ages 55 and older obtain private-sector, unsubsidized employment through job training and placement activities. To learn more about SCSEP and to inform continuous improvement of the program, the Older Workers Study was created. This is a new collection request associated with the same study. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 1, 2024 (89 FR 22432).

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–CEO.

Title of Collection: SCSEP Older Workers Study Impact Evaluation.

OMB Control Number: 1290–0NEW.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 1,600.

Total Estimated Number of Responses: 1,600.

Total Estimated Annual Time Burden: 400 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2025–01254 Filed 1–17–25; 8:45 am]

BILLING CODE 4510–HX–P

NUCLEAR REGULATORY COMMISSION

[NRC–2025–0009]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person.

DATES: Comments must be filed by February 20, 2025. A request for a hearing or petitions for leave to intervene must be filed by March 24, 2025. This monthly notice includes all amendments issued, or proposed to be issued, from December 6, 2024, to January 2, 2025. The last monthly notice was published on December 23, 2024.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website.

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2025–0009. 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–

A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Susan Lent, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1365; email: *Susan.Lent@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2025–0009, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2025–0009.
- *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 ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *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.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2025–0009, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown in this notice, the Commission finds that the licensees' analyses provided, consistent with section 50.91 of title 10 of *the Code of Federal Regulations* (10 CFR) ''Notice for public comment; State consultation,'' are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a

significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing docket where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT REQUEST(S)

Florida Power & Light Company, et al.; St. Lucie Plant, Unit No. 2; St. Lucie County, FL	
Docket No	50–389.
Application date	November 26, 2024.
ADAMS Accession No	ML24331A249.
Location in Application of NSHC	Pages 12–15 of Enclosure 1.
Brief Description of Amendment	The proposed license amendment would revise the St. Lucie Plant, Unit No. 2, Technical Specification 5.5.16, ''Surveillance Frequency Control Program,'' to increase certain surveillance requirement frequencies to support a 24-month fuel cycle. The proposed modification to the Surveillance Frequency Control Program would permit affected surveillance requirement frequency increases in accordance with NRC Generic Letter 91–04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle,'' dated April 2, 1991.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	James Petro, Managing Attorney—Nuclear, Florida Power & Light Company 700 Universe Boulevard, MS LAW/JB, Juno Beach, FL 33408–0420.
NRC Project Manager, Telephone Number	Natreon Jordan, 301–415–7410.
Northern States Power Company; Monticello Nuclear Generating Plant; Wright County, MN	
Docket No	50–263.
Application date	October 21, 2024.
ADAMS Accession No	ML24327A157.
Location in Application of NSHC	Pages 2–5 of the Enclosure.
Brief Description of Amendment	The proposed amendment would revise the Monticello Nuclear Generating Plant technical specification (TS) actions applicable when a residual heat removal (RHR) shutdown cooling subsystem is inoperable and provide a TS exception to entering Mode 4 if both required RHR shutdown cooling subsystems are inoperable. The proposed changes are consistent with Technical Specification Task Force (TSTF) Traveler TSTF–566, ''Revise Actions for Inoperable RHR Shutdown Cooling Subsystems,'' and Traveler TSTF–580, Revision 1, ''Provide Exception from Entering Mode 4 with No Operable RHR Shutdown Cooling.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Peter M. Glass, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall—401–8, Minneapolis, MN 55401.
NRC Project Manager, Telephone Number	Brent Ballard, 301–415–0680.
Susquehanna Nuclear, LLC and Allegheny Electric Cooperative, Inc.; Susquehanna Steam Electric Station, Units 1 and 2; Luzerne County, PA	
Docket Nos	50–387, 50–388.
Application date	November 1, 2024.
ADAMS Accession No	ML24306A122.
Location in Application of NSHC	Pages 113–117 of Attachment 1.
Brief Description of Amendments	The proposed amendments would revise technical specifications (TS) for the Susquehanna Steam Electric Station, Units 1 and 2. Specifically, the proposed amendments would modify the primary containment leak rate testing program TS by allowing: increasing the integrated leak rate test program interval; extending test intervals for Type A, B, and C leakage rate tests; extending the drywell-to-suppression chamber bypass leak rate test frequency; extending the frequency of containment isolation valve leakage rate testing; and, using American National Standards Institute/American Nuclear Society Standard 56.8–2020, ''Containment System Leakage Testing Requirements.'' The proposed amendments to the TS would also replace certain guidance document references and delete information regarding the performance of tests that have been successfully performed.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jason Usher, 600 Hamilton Street, Suite 600, Allentown, PA 18101.
NRC Project Manager, Telephone Number	Audrey Klett, 301–415–0489.
Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Hamilton County, TN; Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN	
Docket Nos	50–327, 50–328, 50–390, 50–391.
Application date	November 4, 2024.
ADAMS Accession No	ML24309A061.
Location in Application of NSHC	Pages E19 and E20 of Enclosure.
Brief Description of Amendments	The proposed amendments would revise some definitions in Sequoyah Nuclear Plant, Units 1 and 2, and Watts Bar Nuclear Plant, Units 1 and 2, Technical Specification (TS) 1.1, ''Definitions,'' and add new TS 5.5.19, ''Online Monitoring Program,'' (Sequoyah) and TS 5.7.2.24, ''Online Monitoring Program'' (Watts Bar), to permit the use of an NRC-approved online monitoring (OLM) methodology as the technical basis to switch from time-based surveillance frequency for channel calibrations to a condition-based calibration frequency based on OLM results.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A–K, Knoxville, TN 37902.

LICENSE AMENDMENT REQUEST(S)—Continued

NRC Project Manager, Telephone Number	Kimberly Green, 301–415–1627.

Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Hamilton County, TN; Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN

Docket Nos	50–327, 50–328, 50–390, 50–391.
Application date	November 12, 2024.
ADAMS Accession No	ML24317A243.
Location in Application of NSHC	Pages E9–E11 of the Enclosure.
Brief Description of Amendments	The proposed amendments would revise Sequoyah Nuclear Plant, Units 1 and 2, and Watts Bar Nuclear Plant, Units 1 and 2, Technical Specification Limiting Condition of Operation 3.5.2, ''ECCS [emergency core cooling system]—Operating,'' Note 1, to include the residual heat removal pump flow paths in order to optimize surveillance testing.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A–K, Knoxville, TN 37902.
NRC Project Manager, Telephone Number	Kimberly Green, 301–415–1627.

Union Electric Company; Callaway Plant, Unit No. 1; Callaway County, MO

Docket No	50–483.
Application date	December 5, 2024.
ADAMS Accession No	ML24340A175 (Package).
Location in Application of NSHC	Pages 1–3 of the Enclosure.
Brief Description of Amendment	The proposed amendment would adopt Technical Specifications Task Force (TSTF) Traveler, TSTF–591, ''Revise Risk Informed Completion Time (RICT) Program,'' which is an approved change to the Standard Technical Specifications, into the Callaway Plant, Unit No. 1 Technical Specifications (TSs). TSTF–591 revises TS Section 5.5, ''Programs and Manuals,'' ''Risk Informed Completion Time Program,'' to reference Regulatory Guide 1.200, Revision 3, instead of Revision 2, and to make other changes. Also, a new report is added to TS Section 5.6, ''Reporting Requirements,'' to inform the NRC of newly developed methods used to Calculate RICTs.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jay E. Silberg, Pillsbury Winthrop Shaw Pittman LLP, 1200 17th St. NW, Washington, DC 20036.
NRC Project Manager, Telephone Number	Mahesh Chawla, 301–415–8371.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, were published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT ISSUANCES

Constellation Energy Generation, LLC; Braidwood Station, Units 1 and 2, Will County, IL; Byron Station, Unit Nos. 1 and 2, Ogle County, IL; Constellation Energy Generation, LLC; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert County, MD; Constellation Energy Generation, LLC; Clinton Power Station, Unit No. 1; DeWitt County, IL; Constellation Energy Generation, LLC; LaSalle County Station, Units 1 and 2; LaSalle County, IL; Constellation Energy Generation, LLC; Limerick Generating Station, Units 1 and 2; Montgomery County, PA; Constellation Energy Generation, LLC; Peach Bottom Atomic Power Station, Units 2 and 3; York County, PA; Constellation Energy Generation, LLC; R.E. Ginna Nuclear Power Plant; Wayne County, New York; Constellation FitzPatrick, LLC and Constellation Energy Generation, LLC; James A. FitzPatrick Nuclear Power Plant; Oswego County, NY; Nine Mile Point Nuclear Station, LLC and Constellation Energy Generation, LLC; Nine Mile Point Nuclear Station, Units 1 and 2; Oswego County, NY

Docket Nos	50–456, 50–457, 50–454, 50–455, 50–317, 50–318, 50–461, 50–333, 50–373, 50–374, 50–352, 50–353, 50–220, 50–410, 50–277, 50–278, 50–244.
Amendment Date	December 18, 2024.
ADAMS Accession No	ML24339B729.
Amendment Nos	Braidwood 236 (Units 1 and 2); Byron 235 (Units 1 and 2); Calvert Cliffs 351 (Unit 1), 328 (Unit 2); Clinton 255; FitzPatrick 359; LaSalle 264 (Unit 1), 249 (Unit 2); Limerick 265 (Unit 1), 227 (Unit 2); Nine Mile 254 (Unit 1), 198 (Unit 2); Peach Bottom 345 (Unit 2), 348 (Unit 3); R.E. Ginna 157.
Brief Description of Amendments	The amendments revised the technical specifications (TSs) for each facility in accordance with Technical Specifications Task Force (TSTF) Traveler TSTF–591, Revision 0, ''Revise Risk-Informed Completion Time (RICT) Program.'' A new report is added to inform the NRC of newly developed methods used to calculate a RICT. Additionally, the amendments removed certain facility's Facility Operating License condition sections associated with the implementation of 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors,'' and RICT programs.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Florida Power & Light Company; Turkey Point Nuclear Generating Unit Nos. 3 and 4; Miami-Dade County, FL

Docket Nos	50–250, 50–251.
Amendment Date	December 11, 2024.
ADAMS Accession No	ML24319A294.
Amendment Nos	299 (Unit 3); 292 (Unit 4).
Brief Description of Amendments	The amendments revised the Turkey Point Nuclear Generating, Unit Nos. 3 and 4, technical specifications (TS) by incorporating changes to TS 3.7.13, ''Fuel Storage Pool Boron Concentration,'' TS 3.7.14, ''Spent Fuel Storage,'' and TS 4.3, ''Fuel Storage,'' to allow for an updated spent fuel pool criticality safety analysis that accounts for the impact on the spent fuel from a proposed transition to 24-month fuel cycles.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Indiana Michigan Power Company: Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2; Berrien County, MI

Docket Nos	50–315, 50–316.
Amendment Date	December 18, 2024.
ADAMS Accession No	ML24297A130.
Amendment Nos	364 (Unit 1); 345 (Unit 2).
Brief Description of Amendments	The amendments revised Technical Specification (TS) 3.3.3, ''Post Accident Monitoring (PAM) Instrumentation'' to not require environmental qualification to be maintained for TS 3.3.3, Function 1, Neutron Flux, instrumentation.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Northern States Power Company; Monticello Nuclear Generating Plant; Wright County, MN

Docket No	50–263.
Amendment Date	December 19, 2024.
ADAMS Accession No	ML24270A155.
Amendment No	213.
Brief Description of Amendment	The amendment replaced the current neutron fluence methodology with a newer methodology and revised the technical specifications to update the methodology for developing a pressure temperature limits report.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Pacific Gas and Electric Company; Diablo Canyon Nuclear Power Plant, Units 1 and 2; San Luis Obispo County, CA

Docket Nos	50–275, 50–323.
Amendment Date	December 11, 2024.
ADAMS Accession No	ML24269A083.
Amendment Nos	247 (Unit 1) and 249 (Unit 2).

LICENSE AMENDMENT ISSUANCES—Continued

Brief Description of Amendments	The amendments allowed the implementation of 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors.'' The provisions in 10 CFR 50.69 allows adjustment of the scope of structures, systems, and components (SSCs) subject to special treatment requirements (e.g., quality assurance, testing, inspection, condition monitoring, assessment, and evaluation) based on an integrated, systematic, risk-informed process for categorizing SSCs according to their safety significance.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2; Appling County, GA

Docket Nos	50–321, 50–366.
Amendment Date	December 9, 2024.
ADAMS Accession No	ML24281A097.
Amendment Nos	323 (Unit 1), 268 (Unit 2).
Brief Description of Amendments	The amendments revised Technical Specification (TS) Surveillance Requirement (SR) 3.4.3.1 to increase the nominal mechanical relief setpoints for all safety/relief valves (S/RVs) of the reactor coolant system nuclear pressure relief system. These changes will reduce the potential for S/RV pilot leakage. As a result of the increased S/RV setpoints, the amendments also revised SR 3.1. 7. 7 to increase the minimum Standby Liquid Control pump discharge pressure accordingly.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2; Appling County, GA

Docket Nos	50–321, 50–366.
Amendment Date	December 20, 2024.
ADAMS Accession No	ML24312A367.
Amendment Nos	324 (Unit 1), 269 (Unit 2).
Brief Description of Amendments	The amendments revised the Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Technical Specification (TS) requirements related to Completion Times (CTs) for Required Actions to provide the option to calculate a longer, risk-informed CT (RICT) for the condition of one pump inoperable for TS 3.7.1, ''Residual Heat Removal Service Water (RHRSW) System,'' and for TS 3.7.2, ''Plant Service Water (PSW) System and Ultimate Heat Sink (UHS).'' Additionally, the amendments also made corresponding revisions to TS 5.5.16, ''Risk Informed Completion Time Program,'' and to TS 1.3, ''Completion Times,'' Example 1.3–8.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Southern Nuclear Operating Company, Inc.; Joseph M. Farley Nuclear Plant, Units 1 and 2; Houston County, AL; Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA

Docket Nos	50–364, 50–348, 50–424, 50–425.
Amendment Date	December 20, 2024.
ADAMS Accession No	ML24330A123.
Amendment Nos	Farley 251 (Unit 1), 248 (Unit 2), Vogtle 226 (Unit 1), 208 (Unit 2).
Brief Description of Amendments	For Farley, Units 1 and 2, and Vogtle, Units 1 and 2, the amendments revised the Technical Specifications (TSs) to adopt Technical Specification Task Force (TSTF)-589, ''Eliminate Automatic Diesel Generator Start During Shutdown,'' which is an approved change to the Standard Technical Specifications, into the Farley, Units 1 and 2, and the Vogtle, Units 1 and 2, TSs. TSTF–589 eliminates the TS requirements for automatic diesel generator (DG) start and loading during shutdown. The revised amendments eliminate the TS requirements for the automatic DG start and loading capability to be OPERABLE during shutdown and modifies which DG surveillance requirements are required during shutdown.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Limestone County, AL; Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Hamilton County, TN; Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN

Docket Nos	50–259, 50–260, 50–296, 50–327, 50–328, 50–390, and 50–391.
Amendment Date	December 23, 2024.
ADAMS Accession No	ML24312A322.
Amendment Nos	Browns Ferry 334 (Unit 1), 357 (Unit 2), 317 (Unit 3); Sequoyah 368 (Unit 1), 362 (Unit 2); Watts Bar 172 (Unit 1), 77 (Unit 2).
Brief Description of Amendments	The amendments revised Browns Ferry Nuclear Plant, Units 1, 2, and 3, and Sequoyah Nuclear Plant, Units 1 and 2, Technical Specification (TS) 5.4, ''Procedures,'' and Watts Bar Nuclear Plant, Units 1 and 2, TS 5.7.1, ''Procedures,'' to remove the revision number for Regulatory Guide 1.33 , ''Quality Assurance Program Requirements (Operation),'' and replace it with a reference to the revision that is specified in the Tennessee Valley Authority Nuclear Quality Assurance Plan.

LICENSE AMENDMENT ISSUANCES—Continued

Public Comments Received as to Proposed NSHC (Yes/No).	No.
Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 1; Rhea County, TN	
Docket No	50–390.
Amendment Date	December 23, 2024.
ADAMS Accession No	ML24312A005.
Amendment No	171.
Brief Description of Amendment	The amendment revised the expiration date of the Watts Bar Nuclear Plant, Unit 1, Facility Operating License No. NPF–90 to be 40 years from the date that the full-power operating license was issued, rather than the date that the low-power license was issued. The Facility Operating License will now expire at midnight on February 7, 2036.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN	
Docket Nos	50–390, 50–391.
Amendment Date	December 17, 2024.
ADAMS Accession No	ML24285A207.
Amendment Nos	170 (Unit 1); 76 (Unit 2).
Brief Description of Amendments	The amendments revised Watts Bar Nuclear Plant, Units 1 and 2, technical specifications 2.0, 3.0, 3.1, 3.2, 3.3, 3.4, and 5.9.5 by adopting various Technical Specifications Task Force travelers.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
General Electric Hitachi; Vallecitos Boiling Water Reactor, Alameda County, CA	
Docket No	50–18.
Amendment Date	November 27, 2024.
ADAMS Accession No	ML24348A094 (Package).
Amendment No	22.
Brief Description of Amendment	The NRC reviewed an application submitted by General Electric Hitachi (GEH) on September 7, 2023, as supplemented on September 15, 2023, October 31, 2023, and March 25, 2024, to amend Facility License No. DPR–1. The application sought approval of a License Termination Plan (LTP) to support termination of Facility License No. DPR–1. The NRC prepared a safety evaluation report to document its review and evaluation of the amendment request. Also, in connection with this action, the NRC prepared an environmental assessment (EA) and a finding of no significant impact (FONSI). The notice of availability of the EA and FONSI for the VBWR was published in the **Federal Register** on October 16, 2024 (89 FR 83521). Upon completing its review, the NRC staff determined that the request complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, as well as the NRC's rules and regulations. The NRC approved the LTP and issued Amendment No. 22 to Facility License No. DPR–1 on November 27, 2024.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Dated: January 6, 2025.

For the Nuclear Regulatory Commission.

Jamie Pelton,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2025–00444 Filed 1–17–25; 8:45 am]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Senior Executive Service Performance Review Board Membership

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Annual notice.

SUMMARY: Notice is given of the appointment of members to the Performance Review Board (PRB) of the Occupational Safety and Health Review Commission.

DATES: Membership is effective on January 21, 2025.

FOR FURTHER INFORMATION CONTACT: Michelle Huffman, Human Resources Specialist, U.S. Occupational Safety and Health Review Commission, 1120 20th Street NW—Ninth Floor, Washington, DC 20036–3457, (202) 606–5393.

SUPPLEMENTARY INFORMATION: The Review Commission, as required by 5 U.S.C. 4314(c)(1) through (5), has established a Senior Executive Service PRB. The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor and makes recommendations to the Chairman of the Review Commission regarding performance ratings, performance awards, and pay-for-performance adjustments. Members of the PRB serve for a period of 24 months. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees, pursuant to 5 U.S.C. 4314(c)(5). The names and titles of the PRB members are as follows:

- Fred B. Jacob, Solicitor, National Labor Relations Board;
- Michael A. McCord, General Counsel, Federal Mine Safety and Health Review Commission;

• Reggie James, Associate Director, Court Services and Offender Supervision Agency.

Cynthia L. Attwood,

Chairman.

[FR Doc. 2025–01355 Filed 1–17–25; 8:45 am]

BILLING CODE 7600–01–P

PENSION BENEFIT GUARANTY CORPORATION

Announcement of OMB Approvals of Information Collections

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of OMB approvals.

SUMMARY: The Office of Management and Budget (OMB) has approved Pension Benefit Guaranty Corporation (PBGC) information collections under the Paperwork Reduction Act. This notice lists the approved information collections and provides their corresponding OMB control number and current expiration date.

FOR FURTHER INFORMATION CONTACT: Monica O'Donnell (*odonnell.monica@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–229–8706. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and its implementing regulations require Federal agencies, after receiving OMB approval of information collections, to display OMB control numbers and inform respondents of their legal significance. In accordance with those requirements, PBGC hereby notifies the public that the following information collections, that are contained in PBGC's regulations and do not have a corresponding form, have been approved by OMB.

• OMB Control Number 1212–0065 Disclosure of Information in Distress and PBGC-Initiated Terminations. The expiration date for this information collection contained in 29 CFR parts 4041 and 4042 is February 28, 2027.

• OMB Control Number 1212–0022 Mergers and Transfers Between Multiemployer Plans. The expiration date for this information collection contained in 29 CFR part 4231 is August 31, 2027.

• OMB Control Number 1212–0068 Partitions of Eligible Multiemployer Plans. The expiration date for this information collection contained in 29 CFR part 4233 is December 31, 2027.

• OMB Control Number 1212–0054 Qualified Domestic Relations Orders Submitted to PBGC. The expiration date for this information collection contained in 29 CFR part 4022 is January 31, 2028.

The PRA provides that 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. Publication of this notice satisfies this requirement with respect to the above-listed information collections, as provided in 5 CFR 1320.5(b)(2)(ii).

Issued in Washington, DC, by:

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2025–01360 Filed 1–17–25; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025–1125; K2025–1125; MC2025–1126; K2025–1126; MC2025–1127; K2025–1127; MC2025–1128; K2025–1128; MC2025–1129; K2025–1129; MC2025–1130; K2025–1130; MC2025–1131; K2025–1131; MC2025–1132; K2025–1132]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 23, 2025.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Public Proceeding(s)
III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).:* MC2025–1125 and K2025–1125; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1300 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 14, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* January 23, 2025.

2. *Docket No(s).:* MC2025–1126 and K2025–1126; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1301 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 14, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* January 23, 2025.

3. *Docket No(s).:* MC2025–1127 and K2025–1127; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1302 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 14, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* January 23, 2025.

4. *Docket No(s).:* MC2025–1128 and K2025–1128; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1303 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 14, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* January 23, 2025.

5. *Docket No(s).:* MC2025–1129 and K2025–1129; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1304 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 14, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* January 23, 2025.

6. *Docket No(s).:* MC2025–1130 and K2025–1130; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1305 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 14, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* January 23, 2025.

7. *Docket No(s).:* MC2025–1131 and K2025–1131; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1306 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 14, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth Moeller; *Comments Due:* January 23, 2025.

8. *Docket No(s).:* MC2025–1132 and K2025–1132; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1307 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 14, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth Moeller; *Comments Due:* January 23, 2025.

III. Summary Proceeding(s)

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2025–01378 Filed 1–17–25; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102186; File No. SR–NYSEARCA–2024–98]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Bitwise 10 Crypto Index Fund Under Proposed NYSE Arca Rule 8.800–E (Commodity- and/or Digital Asset-Based Investment Interests)

January 14, 2025.

On November 14, 2024, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Bitwise 10 Crypto Index Fund under Proposed NYSE Arca Rule 8.800–E (Commodity- and/or Digital Asset-Based Investment Interests). The proposed rule change was published for comment in the **Federal Register** on December 3, 2024.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 17, 2025. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates March 3, 2025, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEARCA–2024–98).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–01289 Filed 1–17–25; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 101775 (Nov. 27, 2024), 89 FR 95853.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102193; File No. SR–NASDAQ–2025–001]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee Schedule To (1) Increase the Exchange's Membership Fee at Equity 7, Section 10, and (2) Increase Its Regulatory, Registration and Processing Fees at Equity 7, Section 30

January 14, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2025, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Item I below, which Item has been substantially prepared by the Exchange. The Exchange has designated this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f) thereunder.[4] 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 its fee schedule to (1) increase the Exchange's Membership Fee at Equity 7, Section 10, and (2) increase its Regulatory, Registration and Processing Fees at Equity 7, Section 30.

The proposed rule change, including the Exchange's statement of the purpose of, and statutory basis for, the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* and on the Commission's website at *https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-NASDAQ-2025-001.*

II. 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.[5] Comments may be submitted electronically by using the Commission's internet comment form (*https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-NASDAQ-2025-001*) or by sending an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2025–001 on the subject line. Alternatively, paper comments may be sent to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to file number SR–NASDAQ–2025–001. 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-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-NASDAQ-2025-001*). 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–NASDAQ–2025–001 and should be submitted on or before February 11, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–01295 Filed 1–17–25; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f). At any time within 60 days of the filing the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[5] 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.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Small Business Capital Formation Advisory Committee will hold a public meeting on Tuesday, February 25, 2025, at the Commission's headquarters and via videoconference.

PLACE: The meeting will be conducted by remote means (videoconference) and at the Commission's headquarters, 100 F Street NE, Washington, DC 20549. Members of the public may watch the webcast of the meeting on the Commission's website at *www.sec.gov.*

STATUS: The meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.* This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

MATTERS TO BE CONSIDERED: The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging businesses and their investors under the federal securities laws.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: January 16, 2025.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2025–01517 Filed 1–16–25; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102185; File No. SR–CBOE–2025–001]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Fees for the Cboe Legacy Silexx Platform Versions

January 14, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2025, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission (the ''Commission'') the proposed rule change as described in Item I below, which Item has been substantially prepared by the Exchange. The Exchange has designated this proposal for immediate effectiveness pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f) thereunder.[4] 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

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend fees for the Cboe Legacy Silexx platform versions. The text of the proposed rule change is provided in Exhibit 5.

The proposed rule change, including the Exchange's statement of the purpose of, and statutory basis for, the proposed rule change, is available on the Exchange's website at (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*) and on the Commission's website at *https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-CBOE-2025-001.*

II. 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.[5] Comments may be submitted electronically by using the Commission's internet comment form (*https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-CBOE-2025-001*) or by sending an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2025–001 on the subject line. Alternatively, paper comments may be sent to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to file number SR–CBOE–2025–001. 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-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-CBOE-2025-001*). 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–CBOE–2025–001 and should be submitted on or before February 11, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–01296 Filed 1–17–25; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f). At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[5] 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.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102188; File No. SR–CboeEDGX–2024–089]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

January 14, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2024, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Item I below, which Item has been substantially prepared by the Exchange. The Exchange has designated this proposal for immediate effectiveness pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX Options'') proposes to amend its Fee Schedule for its equity options platform to increase the fees for logical connectivity. The text of the proposed rule change is provided in Exhibit 5.

The proposed rule change, including the Exchange's statement of the purpose of, and statutory basis for, the proposed rule change, is available on the Exchange's website at (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*) and on the Commission's website at *https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-CboeEDGX-2024-089.*

II. 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.[5] Comments may be submitted electronically by using the Commission's internet comment form (*https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-CboeEDGX-2024-089*) or by sending an email to *rule-comments@sec.gov.* Please include file number SR-CboeEDGX–2024–089

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f). At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[5] 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.

on the subject line. Alternatively, paper comments may be sent to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to file number SR–CboeEDGX–2024–089. 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-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-CboeEDGX-2024-089*). 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-CboeEDGX–2024–089 and should be submitted on or before February 11, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–01291 Filed 1–17–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35451; 812–15650]

ETF Opportunities Trust and REX Advisers, LLC

January 15, 2025.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements'').

Summary of Application: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with certain subadvisors without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisors.

Applicants: ETF Opportunities Trust and REX Advisers, LLC.

Filing Dates: The application was filed on October 25, 2024.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on February 10, 2025, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: ETF Opportunities Trust, 8370 Stony Point Parkway, Suite 205, Richmond, Virginia 23235, REX Advisers, LLC, 1241 Post Road, Second Floor, Fairfield, Connecticut 06824, and John H. Lively, Esq, *John.Lively@practus.com.*

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, or Daniele Marchesani, Assistant Chief Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated October 25, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Office of Investor Education and Advocacy at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–01364 Filed 1–17–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, January 23, 2025.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

[6] 17 CFR 200.30–3(a)(12).

Dated: January 16, 2025.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2025–01519 Filed 1–16–25; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35450; 812–15648]

ETF Opportunities Trust and Brookmont Capital Management, LLC

January 15, 2025.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements'').

SUMMARY OF APPLICATION: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with certain subadvisors without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisors.

APPLICANTS: ETF Opportunities Trust and Brookmont Capital Management, LLC.

FILING DATES: The application was filed on October 23, 2024 and amended on November 4, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on February 10, 2025, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: ETF Opportunities Trust, 8370 Stony Point Parkway, Suite 205, Richmond, Virginia 23235, Brookmont Capital Management, 5950 Berkshire Lane, Suite 1420, Dallas, Texas 75225 and John H. Lively, Esq, *John.Lively@practus.com.*

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, or Daniele Marchesani, Assistant Chief Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' amended application, dated November 4, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Office of investor Education and Advocacy at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–01363 Filed 1–17–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102183; File No. SR–NYSE–2024–23]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Withdrawal of a Proposed Rule Change To Amend Section 703.12(II) of the NYSE Listed Company Manual To Expand the Circumstances Under Which Rights May Be Listed on the NYSE

January 14, 2025.

On April 29, 2024, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Section 703.12(II) of the NYSE Listed Company Manual to expand the circumstances under which rights may be listed on the NYSE by allowing issuers to (i) issue rights to more than existing shareholders for a class of securities that is listed or to be listed on the Exchange, and (ii) list and trade rights on the Exchange prior to listing the security into which such rights will be exercisable. The proposed rule change was published for comment in the **Federal Register** on May 15, 2024.[3]

On June 26, 2024, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On August 19, 2024, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On November 5, 2024, the Commission designated a longer period for Commission action on the proposed rule change.[8]

On December 17, 2024, the Exchange withdrew the proposed rule change (SR–NYSE–2024–23).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–01292 Filed 1–17–25; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 100102 (May 10, 2024), 89 FR 42543.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 100437, 89 FR 54894 (July 2, 2024).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 100720 (August 13, 2024), 89 FR 67120 (August 19, 2024).

[8] *See* Securities Exchange Act Release No. 101517 (November 12, 2024), 89 FR 89070 (November 5, 2024) (Extension No. 2). The Commission designated January 10, 2025, as the date by which the Commission shall approve or disapprove the proposed rule change.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102182; File No. SR–SAPPHIRE–2025–01]

Self-Regulatory Organizations; MIAX Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Exchange Rule 2090 To Establish a Virtual Trading Floor

January 14, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3, 2025, MIAX Sapphire, LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Item I below, which Item has been substantially prepared by the Exchange. The Exchange has designated this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f) thereunder.[4] 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 adopt Exchange Rule 2090 to establish a Virtual Trading Floor.

The proposed rule change, including the Exchange's statement of the purpose of, and statutory basis for, the proposed rule change, is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-sapphire/rule-filings* and on the Commission's website at *https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-SAPPHIRE-2025-01.*

II. 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.[5] Comments may be submitted electronically by using the Commission's internet comment form (*https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-SAPPHIRE-2025-01*) or by sending an email to *rule-comments@sec.gov.* Please include file number SR–SAPPHIRE–2025–01 on the subject line. Alternatively, paper comments may be sent to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to file number SR–SAPPHIRE–2025–01. 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-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-SAPPHIRE-2025-01*). 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.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–01294 Filed 1–17–25; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f). At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[5] 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.
number SR–SAPPHIRE–2025–01 and should be submitted on or before February 11, 2025.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102194; File No. SR–BX–2025–002]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Membership Fee at Equity 7, Section 10

January 14, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2025, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Item I below, which Item has been substantially prepared by the Exchange. The Exchange has designated this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f) thereunder.[4] 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 its fee schedule to increase the Exchange's Membership Fee at Equity 7, Section 10. The proposed rule change, including the Exchange's statement of the purpose of, and statutory basis for, the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* and on the Commission's website at *https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-BX-2025-002.*

II. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f). At any time within 60 days of the filing the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

change is consistent with the Act.[5] Comments may be submitted electronically by using the Commission's internet comment form (*https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-BX-2025-002*) or by sending an email to *rule-comments@sec.gov.* Please include file number SR–BX–2025–002 on the subject line. Alternatively, paper comments may be sent to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to file number SR–BX–2025–002. 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-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-BX-2025-002*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BX–2025–002 and should be submitted on or before February 11, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

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[5] 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.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102190; File No. SR–IEX–2025–02]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing of a Proposed Rule Change to Adopt Rules to Govern the Trading of Options on the Exchange for a New Facility Called IEX Options

January 14, 2025.

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 January 10, 2025, the Investors Exchange LLC (''IEX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] the Exchange is filing with the Commission a rule change proposal to adopt rules to govern the trading of options on IEX Options LLC, a facility of the Exchange that will be established in a separate rule filing (referred to herein as ''IEX Options''). As proposed, the Exchange will operate IEX Options as a fully automated trading system built on the core functionality of the Exchange's approved equities platform, and in a manner similar to that of other options exchanges. In addition, IEX Options will utilize a de minimis delay on incoming order and quote messages designed to enable IEX to update its view of the market prior to processing orders and quotes, and an optional Market Maker quote parameter designed to protect Market Makers from excessive risk due to execution of stale quotes, in addition to other risk protections substantially similar to those offered by other options exchanges.

The text of the proposed rule change is available at the Exchange's website at *https://www.iexexchange.io/resources/regulation/rule-filings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Overview

The Exchange proposes to adopt a series of rules in connection with IEX Options, which will be a facility of the Exchange.[6] As proposed, the Exchange will operate IEX Options as a fully automated trading system built on the core functionality of the Exchange's approved equities platform, and in a manner similar to that of other options exchanges.[7]

As proposed, IEX Options will operate an electronic trading system to list and trade options issued by the Options Clearing Corporation (''Clearing Corporation'' or ''OCC''). Specifically, IEX proposes to operate a fully automated, pro-rata priority options market in a manner similar to that of other options exchanges. In addition, IEX Options will utilize a de minimis delay on incoming order and quote messages designed to enable IEX to update its view of the market prior to processing orders and quotes, and an optional Market Maker quote parameter designed to protect Market Makers from

[6] IEX will file a separate proposed rule change with the Commission pursuant to Section 19 of the Act to provide that IEX Options will be operated by IEX Options LLC, a Delaware limited liability company wholly owned by the Exchange, as a facility of the Exchange as that term is defined in Section 3(a)(2) of the Act.

[7] The IEX Options proposed rules are largely based on the rules of other options exchanges, as described herein. When a particular proposed rule is described as ''substantively identical'' to a rule(s) of another exchanges that means that the substance of the proposed IEX Options rule is identical to the referenced rule of the other exchange, with differences only to reflect terminology and numbering. When a particular proposed rule is described as ''substantially similar'' to a rule(s) of another exchange this rule filing describes the relevant differences.

excessive risk due to execution of stale quotes, in addition to other risk protections substantially similar to those offered by other options exchanges.

The Exchange proposes to adopt rules applicable to IEX Options that are substantially similar to the approved rules of the MEMX, C1, MIAX, and NYSE Amex and Arca options exchanges, with the material proposed differences described herein.[8]

As provided in proposed Rule 17.110 (Applicability), existing Exchange Rules [9] applicable to the IEX equities market contained in Chapters 1 through 16 of the Exchange Rules will apply to Options Members unless a specific Exchange Rule applicable to the IEX Options market (in proposed Chapters 17 through 29 of the Exchange Rules) governs or unless the context otherwise requires.

The IEX Options Trading System [10] will provide for the electronic display and execution of orders on a pro-rata basis. All Exchange Members will be eligible to participate in IEX Options by qualifying as Options Members [11] and obtaining one or more trading permits for their activity on IEX Options, in accordance with applicable IEX Options rules. The IEX Options Trading System will provide an optional routing service for orders when trading interest is not present on IEX Options and will comply with all applicable securities laws and regulations and the obligations of the Options Order Protection and Locked/Crossed Market Plan.

IEX Options Members

Pursuant to the proposed rules in Chapter 18 (Participation on IEX Options), the Exchange will authorize any Exchange Member that meets certain enumerated qualification requirements (any such Member, an ''Options Member'') and any Options Member's Sponsored Participants to obtain access to, and transact business on, IEX Options.[12]

There will be three types of Options Members—Options Order Entry Firms (''OEFs''), Options Market Makers, and Options Clearing Members. Options Members may act in one, two, or all such capacities. OEFs will be those Options Members representing Customer Orders as agent on IEX Options or trading as principal on IEX Options. Options Market Makers, in turn, will be eligible to participate as Registered Market Makers or Specialists, as set forth in Rule 23.100. Additionally, all Options Market Makers may participate as Directed Marker Makers.[13] Clearing Members will be those Options Members that have been admitted to membership in the Clearing Corporation pursuant to the provisions of the Rules of the Clearing Corporation and are self-clearing or that clear IEX Options Transactions for other Options Members.

IEX proposes to issue different types of Trading Permits to Options Members that allow the Trading Permit Holders to: (i) trade one or more products authorized for trading on the Exchange; (ii) act in one or more trading functions authorized by the Rules of IEX Options; and/or (iii) act as a Clearing Member.[14] Trading Permits shall be for the types and terms as shall be determined by the Exchange from time to time, and subject to effectiveness of one or more rule filings pursuant to Section 19(b) of the Act. The proposed rule governing IEX's Trading Permits, 18.140, is based on C1 Rule 3.1.[15]

The rules governing Registered Market Makers and Specialists are substantially based on MIAX and C1 rules.[16] To become an Options Market Maker, an Options Member will be required to register by filing a written application and obtain any required trading permits.[17] The Exchange will not place any limit on the number of entities that may become Options Market Makers, the number of appointments an Options Market Maker may have, or the number of Options Market Makers that may have appointments in a class unless the Exchange determines to impose any such limit based on system constraints, capacity restrictions, or other factors relevant to protecting the integrity of the Trading System. The Exchange will not impose any such limitations until it has submitted objective standards for imposing the limits to the Commission for its review and approval.[18]

As proposed, the Exchange shall appoint Registered Market Makers to one or more classes of options contracts traded on the Exchange. In making such appointments the Exchange shall consider the financial resources available to the Registered Market Maker, the Registered Market Maker's experience and expertise in market making or options trading, the preferences of the Registered Market Maker to receive appointments in specific options classes, and the maintenance and enhancement of competition among Registered Market Makers in each class of options contracts to which they are appointed.[19]

While there may be several Registered Market Makers appointed to a particular class of options contracts, the Exchange may appoint only one Specialist to each options class traded on the Exchange.[20] To be appointed as a Specialist, an Options Member must first satisfy the criteria for appointment as a Registered Market Maker set forth in Rule 23.120(a)(1) and then must participate in the Specialist Qualification Process conducted by the Exchange and detailed in proposed Rule 23.130(b).[21] Factors to

[8] *See* rulebooks of MEMX LLC (''MEMX''), Cboe Exchange, Inc. (''C1''), Miami International Securities Exchange, LLC (''MIAX''), NYSE Arca, Inc. (''NYSE Arca Options''), and NYSE American LLC (''NYSE Amex Options''). However, IEX is not proposing to trade index options at this time and therefore is not proposing rules for the listing and trading of index options.

[9] *See* IEX Rule 1.160(jj).

[10] *See* proposed Rule 22.100(a).

[11] *See* proposed Rule 17.100.

[12] *See* proposed Rules 18.100, 18.110, 18.120, and 18.130.

[13] Directed Market Makers are subject to enhanced quoting obligations (as compared to Registered Market Makers) as set forth in proposed Rule 23.150(e)(3), which is substantively identical to NYSE Amex Options Rule 964.1NYP.

[14] *See* proposed Rule 18.140.

[15] On C1, part of the process of applying to be a Trading Permit Holder is for a broker-dealer to qualify as a participant or member of the exchange. IEX's proposed rule therefore differs from C1 Rule 3.1 because it does not include the membership qualification-related provisions that are addressed elsewhere in IEX's proposed Chapter 18. In particular, IEX is not proposing to incorporate C1 Rule 3.1(a)(3)'s language regarding jurisdiction over Trading Permit Holders because it is covered by Rule 2.120 (requiring all IEX Members to consent to the Exchange's jurisdiction) and proposed Rule 18.140(e) (applying the Exchange's jurisdictional authority to all Options Members). In addition, C1's rule includes limitations on the number of trading permits the exchange may issue. IEX is not proposing such limitations.

[16] *See* MIAX Rules 600–609 (regarding market maker qualifications and obligations) and MIAX Rules 514(d),(e), and (g) (regarding market maker quoting and priority). The primary differences between these MIAX rules and IEX's proposed Market Maker rules are: (1) MIAX has three tiers of market makers, while IEX proposes to have two tiers; (2) MIAX puts Market Makers at a priority level above other non-Priority Customer interest, while IEX will not (IEX's proposed rules are substantively identical to the priority rules in C1 Rule 5.32 as it pertains to C1's Preferred Market Makers); (3) IEX proposes to allocate participation entitlements for Specialists with a priority quote based on the amount of non-Priority customer interest (which is how C1 Rule 5.32(a)(2)(B) allocates priority overlays), while MIAX only looks at the amount of other market maker interest; and (4) MIAX offers a Market Turner priority overlay which IEX is not proposing to adopt.

[17] *See* proposed Rules 23.100 and 18.140.

[18] This provision is substantively identical to MEMX Rule 22.2(c) and MIAX Rule 600(d).

[19] *See* proposed Rule 23.120(a)(1).

[20] *See* proposed Rule 23.130(g)(1)(A), which is substantively identical to NYSE Amex Options Rule 923NY(b). The language providing that the Exchange ''may'' appoint only one Specialist to each options class is based upon and substantively identical to NYSE Amex Options Rule 923NY(b).

[21] IEX based the proposed Specialist rule (23.130) on NYSE Amex Options Rules 927NY, 927.1NY, and 927.2NY because these rules provide clear instructions to prospective Specialist candidates

be considered for selection as a Specialist include, but are not limited to, representations regarding capital operations, personnel or technical resources.[22] After designating certain Market Makers as Specialists, the Exchange will conduct a process to determine which options classes to allocate to which Specialist, based upon which candidate appears best able to perform the functions of a Specialist in the designated options classes. Factors to be considered in the allocation of options classes to Specialists by the Exchange include, but are not limited to the following: experience with trading the options issue; adequacy of capital; willingness to promote the Exchange as a marketplace; operational capacity; support personnel; history of adherence to Exchange rules and securities laws; and evaluations made pursuant to Rule 23.130(f).[23] The Exchange will also consider the number and quality of issues that have been allocated, reallocated or transferred to a Specialist and the Specialist's willingness to promote the Exchange as a marketplace.[24]

The Exchange will also evaluate the performance of Specialists, and upon a finding that a Specialist failed to meet minimum performance standards, may take adverse action against the Specialist; Specialists shall have the right to appeal any adverse actions against them pursuant to IEX Rule Series 9.500, which governs adverse actions.[25]

Quotations may only be entered by a Market Maker and only in classes of options contracts to which the Market Maker is appointed.[26] Market Makers may also submit orders in classes of options contracts to which the Market Maker is appointed, which shall constitute a quote, and thus would help to satisfy the Market Maker's quoting obligation.[27] In addition, an Options Market Maker with an OEF trading permit may submit orders in classes of options in which the Market Maker has no appointment, provided that the total number of such orders executed by the Market Maker do not exceed 25% of all contracts the Market Maker executes on the Exchange in any calendar quarter.[28]

Options Market Makers will be required to electronically engage in a course of dealing reasonably calculated to contribute to the maintenance of fair and orderly markets.[29] IEX does not propose to incorporate MIAX's requirement that Market Makers refrain from purchasing an option at a price more than $0.25 below parity,[30] because IEX does not believe the restriction is necessary to the maintenance of fair and orderly markets requirement, and notes that other exchanges do not include this restriction.[31] Market Makers will be required to maintain a two-sided market on a continuous basis [32] in at least 60% of the non-adjusted options series to which they are appointed as Registered Market Makers and at least 90% of the non-adjusted options series to which they are appointed as Specialists, provided the options classes have a time to expiration of less than nine months.[33] And, as noted above, Directed Market Makers are subject to enhanced quoting obligations compared to Registered Market Makers.[34] Market Makers and Specialists may use quotes and orders to meet the applicable quoting requirements. These obligations will not apply to an intra-day add-on series on the day during which such series was added for trading. Market Maker quotes must be firm quotes that comply with enumerated price and size rules.[35] These obligations also will not apply when an Options series is halted because the underlying security has entered a Limit or Straddle state.[36] Registered Market Makers and Specialists also must maintain minimum net capital in accordance with Commission and Exchange rules.[37] Substantial or continued failure by an Options Market Maker to meet any of its obligations and duties will subject the Options Market Maker to disciplinary action, suspension, or revocation of the Market Maker's registration as such or its appointment in one or more of its appointed options classes.[38]

As on other exchanges, Options Market Makers receive certain benefits for carrying out their duties. For example, a lender may extend credit to a broker-dealer without regard to the restrictions in Regulation T of the Board of Governors of the Federal Reserve System if the credit is to be used to finance the broker-dealer's activities as a specialist or market maker on a national securities exchange. Thus, an Options Market Maker has a corresponding obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify this favorable treatment.

Every Options Member shall at all times maintain membership in another registered options exchange that is not registered solely under Section 6(g) of the Exchange Act or in FINRA.[39] OEFs and other Options Members that transact business with Public Customers must at all times be members of FINRA. Pursuant to proposed Rule 18.110(h), every Options Member will be required to have at least one registered Options Principal who satisfies the criteria of that rule, including the satisfaction of a proper qualification examination. An OEF may only transact business with Public Customers if such Options Member also is an Options Member of another registered national securities exchange or association with which the Exchange has entered into an agreement under Rule 17d–2 under the Exchange Act [40] pursuant to which such other exchange or association shall be the designated options examining authority for the OEF.[41]

The proposed rules relating to qualification and participation on IEX Options as an Options Member (including as an OEF, Options Market

about the manner in which the Exchange selects and evaluates Specialists, and detailed rules about Specialist rights and obligations.

[22] *See* proposed Rule 23.130(b)(1). This rule is substantively identical to NYSE Amex Options Rule 927NY, with the exception that IEX is not proposing to obligate Specialists to make FLEX quotes, because those are not offered by the Exchange.

[23] *See* proposed Rule 23.130(g). This rule is substantively identical to NYSE Amex Options Rule 927.2NY

[24] *Id.*

[25] *See* proposed Rule 23.130(b)(2), and (f). These rules are substantively identical to NYSE Amex Options Rules 927NY(b)(2) and 927.1NY, respectively.

[26] *See* proposed Rule 23.150(a).

[27] *See* proposed Rule 17.100 (defining ''Quote'' to include orders entered by a Market Maker in the option series to which such Market Maker is registered).

[28] *See* proposed Rule 23.150(g).

[29] *See* proposed Rule 23.140(a).

[30] *See* MIAX rule 603(a).

[31] *See, e.g.,* NYSE Arca Options Rule 6.37–O.

[32] ''Continuous quoting'' is defined as 90% of the time. *See* proposed Rule 23.150(e).

[33] *See* proposed Rule 23.150(e)(2) and (e)(1). Proposed Rule 23.150(e)(1) is based upon and substantively identical to NYSE Amex Options Rule 925.1NYP(b) and proposed Rule 23.150(e)(2) is based upon and substantively identical to NYSE Amex Options Rule 925.1NYP(c).

[34] *See supra* note 13.

[35] *See* proposed Rule 23.150(b) and (d).

[36] *See* Supplementary Material .01 to proposed Rule 23.150(h), which is substantively identical to MIAX Rule 530(f)(1).

[37] *See* proposed Rule 23.180 ($200,000 net capital requirement for Registered Market Makers), which is substantively identical to MEMX Rule 22.9 and proposed Rule 23.130(c)(1)(H) ($1,000,000 net capital requirement for Specialists), which is substantively identical to Amex Options Rule 927NY(c)(10).

[38] *See* proposed Rule 23.120(f). NYSE Amex Options Rule 927.1NY(1)(B) specifies that NYSE Amex Options provides its specialists information related to their market share in allocated issues on a monthly basis as part of the evaluation process. IEX is not proposing to include this provision because it understands that Specialist firms are well-equipped to monitor their market share and performance on IEX and other markets.

[39] *See* proposed Rule 18.110(g).

[40] 17 CFR 240.17d–2.

[41] *See* Rule 27.100.

Maker, or Clearing Member) are substantively identical to the relevant rules of MEMX Options.[42]

As provided in proposed Rule 17.110, existing Exchange Rules applicable to the IEX equities market contained in Chapters 1 through 16 of the Exchange Rules will apply to Options Members unless a specific Exchange Rule applicable to the IEX Options market (proposed Chapters 17 through 29 of the Exchange Rules) governs or unless the context otherwise requires. Options Members can therefore provide sponsored access to the IEX Options Exchange to a non-Member (*i.e.,* a Sponsored Participant) pursuant to Rule 11.130 of the Exchange Rules.

Definitions

The Exchange proposes to define a series of terms under proposed Rule 17.100 (Definitions), which are to be used in proposed Chapters 17 to 29 relating to the trading of options contracts on the Exchange. Unless otherwise indicated, all of the terms defined in proposed Rule 17.100 are either identical or substantially similar to definitions included in MEMX Rule 16.1. Any modifications to the MEMX definitions, or definitions based upon the rules of other exchanges are specifically indicated below.

The definitions under proposed Rule 17.100 are as follows:

• ABBO. The term ''ABBO'' or ''Away Best Bid or Offer'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (as defined in Rule 28.100) and calculated by the Exchange based on market information the Exchange receives from OPRA.[43]

• Aggregate Exercise Price. The term ''Aggregate Exercise Price'' means the exercise price of an options contract multiplied by the number of units of the underlying security covered by the options contract.

• American-Style Option. The term ''American-Style'' option means an options contract that, subject to the provisions of Rule 24.100 (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, may be exercised at any time from its commencement time until its expiration.

• Associated Person and Person Associated with an Options Member. The terms ''associated person'' and ''person associated with an Options Member'' mean any partner, officer, director, or branch manager of an Options Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with an Options Member or any employee of an Options Member, except that any person associated with an Options Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Rules.

• Bid. The term ''bid'' means a Limit order to buy one or more options contracts.

• Board. The term ''Board'' means the Board of Directors of Investors' Exchange LLC.

• Call. The term ''call'' means an options contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Clearing Corporation the number of shares of the underlying security covered by the options contract.

• Capacity. The term ''capacity'' means the capacity in which a User submits an order, which the User specifies by applying the corresponding code to the order. The capacity codes available on IEX Options will be listed in publicly available specifications and published in a Regulatory Circular.

• Class of Options. The terms ''class'' or ''class of options'' mean all options contracts with the same unit of trading covering the same underlying security.

• Clearing Corporation and OCC. The terms ''Clearing Corporation'' and ''OCC'' mean The Options Clearing Corporation.

• Clearing Member. The term ''Clearing Member'' means an Options Member that is self-clearing or an Options Member that clears IEX Options Transactions for other Options Members.

• Closing Purchase Transaction. The term ''closing purchase transaction'' means an IEX Options Transaction that reduces or eliminates a short position in an options contract.

• Closing Writing Transaction. The term ''closing writing transaction'' means an IEX Options Transaction that reduces or eliminates a long position in an options contract.

• Control. The term ''control'' means the power to exercise a controlling influence over the management or policies of a person, unless such power is solely the result of an official position with such person. Any person who owns beneficially, directly or indirectly, more than 20% of the voting power in the election of directors of a corporation, or more than 25% of the voting power in the election of directors of any other corporation which directly or through one or more affiliates owns beneficially more than 25% of the voting power in the election of directors of such corporation, shall be presumed to control such corporation.[44]

• Covered Short Position. The term ''covered short position'' means (i) an options position where the obligation of the writer of a call option is secured by a ''specific deposit'' or an ''escrow deposit'' meeting the conditions of Rules 610(f) or 610(g), respectively, of the Rules of the Clearing Corporation, or the writer holds in the same account as the short position, on a share-for-share basis, a long position either in the underlying security or in an options contract of the same class of options where the exercise price of the options contract in such long position is equal to or less than the exercise price of the options contract in such short position; and (ii) an options position where the writer of a put option holds in the same account as the short position, on a share-for-share basis, a long position in an options contract of the same class of options where the exercise price of the options contract in such long position is equal to or greater than the exercise price of the options contract in such short position.

• Customer. The term ''Customer'' means a Public Customer or a broker-dealer.

• Customer Order. The term ''Customer order'' means an agency order for the account of a Customer.

• Directed Order. The term ''Directed Order'' is an order entered into the Trading System by an Options Member with a designation for a Market Maker in that class (referred to as a ''Directed Market Maker'' or ''DMM''). To qualify as a Directed Order, an order must be entered on behalf of a Priority Customer.[45]

• Discretion. The term ''discretion'' means the authority of a broker or dealer to determine for a Customer the type of

[42] *See* MEMX Rulebook Chapters 17 and 22.

[43] IEX notes that this definition differs from the MEMX definition of ABBO by spelling out the phrase ''Away Best Bid or Offer'' that ABBO refers to for added clarity.

[44] This definition is substantively identical to the definition in C1 Rule 1.1. IEX proposes to incorporate this definition, because the term is not specifically defined in the MEMX rulebook and IEX believes that term would provide helpful context to Options Members with respect to other rules that use the term, *e.g.,* proposed IEX Rule 19.200.

[45] This definition is based upon the definition in MIAX Options Exchange (''MIAX'') Rule 100, with the distinction that IEX proposes to make any Market Maker eligible to receive a Directed Order, while MIAX only allows their Lead Market Makers (akin to IEX's proposed ''Specialists'') and Primary Lead Market Makers eligible; this aspect of IEX's proposed rule change is based upon and substantially similar to C1 Rule 5.32. Additionally, IEX proposes to include language in the last sentence of this definition based on NYSE Amex Rule 900.3NYP(i)(4) to clarify that an order submitted on behalf of a non-Priority Customer would be treated as a non-Directed Order.

option, the class or series of options, the number of contracts, or whether options are to be bought or sold.

• European-Style Option. The term ''European-style option'' means an options contract that, subject to the provisions of Rule 24.100 (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, can be exercised only on its expiration date.

• Exchange Act. The term ''Exchange Act'' or ''Act'' means the Securities Exchange Act of 1934, as amended, or Rules thereunder.

• Exercise Price. The term ''exercise price'' means the specified price per unit at which the underlying security may be purchased or sold upon the exercise of an options contract.

• He, Him, and His. The terms ''he,'' ''him'' and ''his'' are deemed to refer to persons of female as well as male gender, and to include organizations, as well as individuals, when the context so requires.

• IEX Exchange and Exchange. The terms ''IEX Exchange'' and ''Exchange'' mean Investors' Exchange LLC, a registered national securities exchange.

• IEX Options. The term ''IEX Options'' means IEX Options LLC, a Delaware limited liability company wholly owned by the Exchange, which operates as an options trading facility of the Exchange under Section 3(a)(2) of the Exchange Act.

• IEX Options Book. The term ''IEX Options Book'' means the electronic book of options orders maintained by the Trading System.[46]

• IEX Options Transaction. The term ''IEX Options Transaction'' means a transaction involving an options contract that is effected on or through IEX Options or its facilities or systems.[47]

• Individual Equity Option. The term ''individual equity option'' means an options contract which is an option on an equity security.

• Long Position. The term ''long position'' means a person's interest as the holder of one or more options contracts.

• Market Makers (and Options Market Makers). The terms ''Market Makers'' or ''Options Market Makers'' refer collectively to Options Members registered, pursuant to Rule 23.100, as either a ''Registered Market Maker'' or a ''Specialist''.[48]

• MPID. The term ''MPID'' means unique market participant identifier assigned to an Options Member.

• NBB, NBO, and NBBO. The term ''NBB'' means the national best bid, the term ''NBO'' means the national best offer, and the term ''NBBO'' means the national best bid or offer as calculated by IEX Options based on market information received by IEX Options from OPRA.

• Offer. The term ''offer'' means a Limit order to sell one or more options contracts.

• OPRA. The term ''OPRA'' means the Options Price Reporting Authority.

• Opening Purchase Transaction. The term ''opening purchase transaction'' means a IEX Options Transaction that creates or increases a long position in an options contract.

• Opening Writing Transaction. The term ''opening writing transaction'' means a IEX Options Transaction that creates or increases a short position in an options contract.

• Options Contracts. The term ''options contract'' means a put or a call issued, or subject to issuance by the Clearing Corporation pursuant to the Rules of the Clearing Corporation.

• Options Market Close and Market Close. The terms ''options market close'' and ''market close'' mean the time the Exchange specifies for the end of a trading session on the Exchange on that trading day.

• Options Market Open and Market Open. The terms ''options market open'' and ''market open'' mean the time the Exchange specifies for the beginning of a trading session on the Exchange on that trading day.

• Options Member. The term ''Options Member'' means a firm, or organization that is registered with the Exchange pursuant to Chapter 18 of these Rules for purposes of participating in options trading on IEX Options as an ''Options Order Entry Firm'', ''Options Market Maker'', or ''Clearing Member.''

• Options Member Agreement. The term ''Options Member Agreement'' means the agreement to be executed by Options Members to qualify to participate on IEX Options.

• Options Order Entry Firm, Order Entry Firm, and OEF. The terms ''Options Order Entry Firm'' and ''Order Entry Firm'' or ''OEF'' mean those Options Members representing as agent Customer Orders on IEX Options and those non-Market Maker Members conducting proprietary trading.

• Options Principal. The term ''Options Principal'' means a person engaged in the management and supervision of the Options Member's business pertaining to options contracts that has responsibility for the overall oversight of the Options Member's options related activities on the Exchange.

• Order. The term ''order'' means a firm commitment to buy or sell options contracts as defined in Rule 22.100.

• Outstanding. The term ''outstanding'' means an options contract which has been issued by the Clearing Corporation and has neither been the subject of a closing writing transaction nor has reached its expiration date.

• Primary Market. The term ''primary market'' means the primary exchange on which an underlying security is listed.[49]

• Priority Customer and Priority Customer Order. The term ''Priority Customer'' means any person or entity that is not: (A) a broker or dealer in securities; or (B) a Professional. The term ''Priority Customer Order'' means an order for the account of a Priority Customer.

• Professional. The term ''Professional'' means any person or entity that (A) is not a broker or dealer in securities; and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). All Professional orders shall be appropriately marked by Options Members.[50]

• Protected Quotation. The term ''Protected Quotation'' has the meaning provided in Rule 28.100.

• Public Customer and Public Customer Order. The term ''Public Customer'' means a person that is not a broker or dealer in securities. The term ''Public Customer Order'' means an order for the account of a Public Customer.

• Put. The term ''put'' means an options contract under which the holder of the option has the right, in accordance with the terms and provisions of the option and the Rules of the OCC, to sell to the Clearing Corporation the number of units of the underlying security covered by the

[46] This definition is substantively identical to the equivalent definition in the MEMX rulebook, except that it refers to IEX, not MEMX.

[47] This definition is substantively identical to the equivalent definition in the MEMX rulebook, except that it refers to IEX, not MEMX.

[48] This definition is substantively identical to the definition in the MIAX rulebook, except that MIAX has three classes of Market Makers (Registered Market Makers, Lead Market Makers, and Primary Lead Market Makers) while IEX proposes to have two classes of Market Makers: Registered Market Makers (equivalent to MIAX Registered Market Maker) and Specialists (which is based on MIAX's Lead Market Maker and Primary Lead Market Maker rules). IEX proposes to incorporate this definition, because the Market Maker rules proposed herein are substantially based upon the rules of MIAX.

[49] This definition is based on the definition in C1 Rule 1.1, because IEX believed the definition was easier to understand than the equivalent definition in the MEMX rulebook.

[50] *See* Proposed Supplementary Material .01 to Rule 17.100, which sets forth the methodology for calculation of Professional orders.

options contract, at a price per unit equal to the exercise price, upon the timely exercise of such option.

• Quarterly Options Series. The term ''Quarterly Options Series'' means a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and expires at the close of business on the last business day of a calendar quarter.

• Quote or Quotation. The terms ''quote'' or ''quotation'' means a bid or offer entered by a Market Maker as a firm order that updates the Market Maker's previous bid or offer, if any. When the term order is used in these Rules and a bid or offer is entered by the Market Maker in the options series to which such Market Maker is registered, such order shall, as applicable, constitute a quote or quotation for purposes of these Rules. A quote or quotation may be canceled or repriced in accordance with Rules 22.250, 22.260, or 23.150, if so designated by the Market Maker to assist in its risk management.

• Registered Market Maker. The term ''Registered Market Maker'' means an Options Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange, who is vested with the rights and responsibilities specified in Chapter 23 of these Rules with respect to Registered Market Makers.[51]

• Responsible Person. The term ''Responsible Person'' means a U.S.-based officer, director, or management-level employee of an Options Member, who is registered with the Exchange as an Options Principal, responsible for the direct supervision and control of associated persons of that Options Member.

• Rules of IEX Options. The term ''Rules of IEX Options'' mean the rules contained in Chapters 17 to 29 of the Investors Exchange Rules governing the trading of options on the Exchange.

• Rules of the Clearing Corporation and Rules of the OCC. The terms ''Rules of the Clearing Corporation'' and ''Rules of the OCC'' mean the Certificate of Incorporation, the By-Laws and the Rules of the Clearing Corporation, and all written interpretations thereof, as may be in effect from time to time.

• SEC or Commission. The terms ''SEC'' or ''Commission'' mean the United States Securities and Exchange Commission.

• Series of Options. The terms ''series'' or ''series of options'' mean all options contracts of the same class that are the same type of options and have the same exercise price and expiration date.

• Short Position. The term ''short position'' means a person's interest as the writer of one or more options contracts.

• Short Term Options Series. The term ''Short Term Options Series'' means a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Tuesday, Wednesday, Thursday or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

• Specialist. The term ''Specialist'' means a Market Maker appointed by the Exchange to act as the primary lead Market Maker for the purpose of making markets in securities traded on the Exchange. The Specialist is vested with the rights and responsibilities specified in Chapter 23 of these Rules with respect to Specialists.[52]

• SRO. The term ''SRO'' means a self-regulatory organization as defined in Section 3(a)(26) of the Exchange Act.

• Timestamp. The term ''timestamp'' means the effective time sequence assigned to an order for purposes of determining its priority ranking.

• Trading Permit. The term ''Trading Permit'' means a license issued by the Exchange to an Options Member that grants the Trading Permit Holder (''TPH'') the right to access one or more of the facilities of the Exchange for the purpose of effecting transactions in options traded on the Exchange without the services of another person acting as broker, and otherwise to access the facilities of the Exchange for purposes of trading or reporting transactions or transmitting orders or quotations in options traded on the Exchange, or to engage in other activities that, under the Rules of IEX Options, may only be engaged in by the TPH that satisfies any applicable qualification requirements to exercise those rights. A Trading Permit conveys no ownership interest in the Exchange, is only available through the Exchange, and is subject to the terms and conditions set forth in Rule 18.140.[53]

• Trading Permit Holder. The term ''Trading Permit Holder'' or ''TPH'' means the holder of a Trading Permit, as described in IEX Rule 18.140.[54]

• Trading System. The term ''Trading System'' means the automated trading system used by IEX Options for the trading of options contracts.

• Type of Option. The term ''type of option'' means the classification of an options contract as either a put or a call.

• Uncovered. The term ''uncovered'' means a short position in an options contract that is not covered.

• Underlying Security. The term ''underlying security'' means the security that the Clearing Corporation shall be obligated to sell (in the case of a call option) or purchase (in the case of a put option) upon the valid exercise of an options contract.

• User. The term ''User'' means any Options Member or Sponsored Participant who is authorized to obtain access to the Trading System pursuant to Rule 11.130 (Access).

Execution System

IEX Options will utilize a pro-rata allocation model with execution priority dependent on the size and capacity of an order; specifically, Priority Customer or non-Priority Customer, as well as status as a Registered Market Maker or Specialist, as applicable. The proposed pro-rata allocation model is similar to the MIAX and NYSE Amex options exchanges.[55]

The Exchange will become an exchange member of the OCC. The Trading System will be linked to OCC

[51] This definition is substantively identical to the definition in MIAX Rule 100. IEX proposes to incorporate this definition, because the Market Maker rules proposed herein are substantially based upon the rules of MIAX.

[52] This definition is substantively identical to the definition of Lead Market Makers and Primary Lead Market Makers in MIAX Rule 100. As discussed above, IEX proposes to incorporate the MIAX definitions for both Lead Market Makers and Primary Lead Market Makers into its definition for Specialists, because the Market Maker rules proposed herein are substantially based upon the rules of MIAX.

[53] This definition is substantively identical to the definition in C1 Rule 1.1. IEX proposes to incorporate this definition, because its proposed Trading Permit rule (Rule 18.140), is substantively similar to the equivalent C1 Rule (C1 Rule 3.1).

[54] This definition is substantively identical to the definition in C1 Rule 1.1. IEX proposes to incorporate this definition, because its proposed Trading Permit rule (Rule 18.140), is substantively similar to the equivalent C1 Rule (C1 Rule 3.1).

[55] *See infra* note 79.

for the Exchange to transmit locked-in trades for clearance and settlement.[56]

IEX Options will include a de minimis delay on incoming order and quote messages designed to enable IEX to update its view of the market prior to processing orders and quotes, and an optional Market Maker quote parameter designed to protect Market Makers from excessive risk due to execution of stale quotes, in addition to other risk protections substantially similar to those offered by other options exchanges.

Anonymity

As set forth in proposed Rule 22.190, aggregated and individual transaction reports produced by the Trading System will indicate the details of a User's transactions, including the contra party's unique market participant identifier (''MPID''), capacity, and clearing firm account number.[57]

Latency Mechanism [58]

IEX's proposal includes a de minimis hardware based latency mechanism (or speedbump) of up to 350 microseconds added to each incoming order and quote message [59] designed to enable IEX to update its view of the market prior to processing orders and quotes as well as to perform the Options Quote Indicator (''Indicator'') calculation with current market data.[60] The specific amount of latency provided by the latency mechanism will be communicated by Trading Alert with at least 30 days prior notice; however, the amount of latency will not exceed 350 microseconds.[61] If the Exchange determines to increase the duration of the maximum delay, it will do so only pursuant to an effective rule filing submitted to the Commission pursuant to Section 19 of the Exchange Act.[62]

Hours of Operation

As provided in proposed Rule 22.110(a), the IEX Options Trading System will begin accepting orders and quotes beginning at 8:00 a.m.[63] pursuant to the market opening procedures described in proposed Rule 22.160. Orders and bids and offers shall be open and available until 4:00 p.m. except for options contracts on Fund Shares, as defined in proposed Rule 20.120(i), which may close as of 4:15 p.m. The Proposed Hours of Operation rule is based on MEMX Rule 21.2, except that MEMX does not allow for submission of quotes before the market opens for trading; IEX notes that other exchanges begin accepting orders and quotes before the market opens, for example C1 begins accepting quotes at 7:30 a.m.[64] Except as set forth above, IEX Options shall operate during the normal business days and hours set forth in the rules of the primary market trading the securities underlying options traded on IEX Options, absent unusual conditions as may be determined by the Exchange.[65] IEX Options will not be open for business on any holiday observed by the Exchange.[66]

Units of Trading

As stated in proposed Rule 22.120, the unit of trading in each series of options traded on IEX Options will be the unit of trading established for that series by the OCC pursuant to the rules of the OCC and the agreements of the Exchange with the OCC. The proposed determination of the unit of trading for a series of options traded on IEX Options is the same as on MEMX Options pursuant to MEMX Rule 21.3.

Minimum Quotation and Trading Increments

As stated in proposed Rule 22.140(a), the Exchange is proposing to apply the following quotation increments: (1) if the options series is trading at less than $3.00, five (5) cents; (2) if the options series is trading at $3.00 or higher, ten (10) cents; and (3) if the options series is trading pursuant to the Penny Interval Program one (1) cent if the options series is trading at less than $3.00, five (5) cents if the options series is trading at $3.00 or higher, except for QQQ, SPY, or IWM where the minimum quoting increment will be one (1) cent for all series. In addition, as stated in proposed Rule 22.140(b), the Exchange is proposing that the minimum trading increment for options contracts traded on IEX Options will be one (1) cent for all series. Such proposed minimum quotation and trading increments are the same as on MEMX Options pursuant to MEMX Rules 21.5(a) and (b).

Penny Interval Program

As set forth in proposed Rule 22.140(c), the Exchange is proposing to adopt a Penny Interval Program that is substantially similar to the penny programs of other exchanges, including MEMX Options pursuant to MEMX Rule 21.5(d), which includes minimum quoting requirements for options classes listed under the Penny Interval Program. However, eligibility for inclusion in the Penny Interval Program will be limited to those classes already operating under penny programs of other options exchanges at the time IEX Options is launched. The list of options classes included in the Penny Interval Program will be announced by the Exchange via circular distributed to Options Members and published by the Exchange on its website.

Order Types and Handling Instructions

The Trading System will make available to Users two Order Types (as defined in proposed Rule 22.100(d))—Limit orders and Market orders—as well as various order instructions and modifiers that can be appended to such orders. The characteristics and functionality of each Order Type is substantially similar to what is currently approved for use in the Exchange's equities trading facility or on other options exchanges, including MEMX Options, except where described below.

IEX Options will support bulk messages for Options Market Makers as specified in the description of each Order Type or other instruction. Proposed Rule 22.100(d) includes the

[56] Proposed Rule 22.220(a) notes that all Options transactions shall be submitted for clearance to the Clearing Corporation, and the Exchange shall assume no responsibility with respect to any unmatched trade or for any delays or errors in the reporting to it of trade information. This provision is based upon and substantively identical to MIAX Rule 524.

[57] The Exchange shall also reveal a User's identity: (i) when a registered clearing agency ceases to act for a participant, or the User's clearing firm, and the registered clearing agency determines not to guarantee the settlement of the User's trades; and (ii) for regulatory purposes or to comply with an order of an arbitrator or court. See proposed Rule 22.190. The Exchange notes that proposed Rule 22.190 is identical to MEMX Rule 21.10.

[58] *See* proposed Rule 22.100(n).

[59] As it does for with equities trading (which applies a constant inbound latency of 350 microseconds), IEX will subject incoming order and quote messages to a *de minimis* delay using coiled optical fiber. *See* Rule 11.510(a).

[60] *See infra* for more information about the Indicator.

[61] In determining the amount of latency, the Exchange will seek to achieve a healthy balance between liquidity providers and liquidity takers. Due to force majeure events and acts of third parties, the Exchange does not guarantee that the delay will always be consistent. The Exchange will periodically monitor such latency and will make adjustments to the latency as reasonably necessary to achieve consistency with the target latency (*i.e.,* the latency that has been communicated) as soon as commercially practicable.

[62] The latency mechanism will not apply to outbound communications from the Exchange to a User, inbound and outbound communications between the Exchange and an Away Market regarding a routed order, inbound communications from data feeds, order processing and order execution on the IEX Options Order Book, outbound communications to the Exchange's proprietary data feeds or OPRA.

[63] All times in this filing refer to the Eastern time zone.

[64] *See* C1 Rule 5.7.

[65] *See* Proposed IEX Rule 22.110(b).

[66] *See* Proposed IEX Rule 22.110(c).

following details with respect to Limit orders and Market orders:

• Limit order. Limit orders are orders (including bulk messages) to buy or sell an option at a specified price or better. A Limit order is marketable when, for a Limit order to buy, at the time it is entered into the Trading System, the order is priced at the current inside offer or higher, or for a Limit order to sell, at the time it is entered into the Trading System, the order is priced at the current inside bid or lower.

• Market order. Market orders are orders to buy or sell at the best price available at the time of execution. Market orders to buy or sell an option traded on IEX Options will be rejected if they are received when the underlying security is subject to a ''Limit State'' or ''Straddle State'' as defined in the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan''). Bulk messages may not be Market orders.

Pursuant to Rule 22.100(d)(3), Users have the option to designate an order as ''attributable'' to that User's MPID. Attributable orders are Market or Limit orders which display the User's MPID for purposes of trading on the Exchange. Use of attributable orders is voluntary. Attributable orders may not be available for all Exchange processes. The Exchange will distribute a circular to Options Members specifying the processes for which the attributable order-type shall be available.[67]

The Trading System will also make available to Users several additional instructions that can be designated on an order (''Handling Instructions''). A Handling Instruction applied to a bulk message applies to each bid and offer within that bulk message. The Handling Instructions available on IEX Options are described in proposed Rule 22.100(e) and will include the following:

• Book Only. Book Only is an instruction that an order is to be ranked and executed on the Exchange pursuant to proposed Rule 22.170 (Order Display and Book Processing) or to be repriced or cancelled, as appropriate, without routing away to another options exchange.

• Post Only. Post Only is an instruction that an order is to be ranked and executed on the Exchange pursuant to proposed Rule 22.170 (Order Display and Book Processing) or cancelled, as appropriate, without routing away to another options exchange except that the order will not remove liquidity from the IEX Options Book. The Trading System reprices, cancels or rejects a bid (offer) designated as Post Only with a price that locks or crosses the Exchange's best offer (bid). A Market order cannot be designated as Post Only.

• Intermarket Sweep Order (''ISO''). ISOs are orders that shall have the meaning provided in proposed Rule 28.100, which relates to intermarket trading. Such orders may be executed at one or multiple price levels in the Trading System without regard to Protected Quotations at other options exchanges (*i.e.,* may trade through such quotations). The Exchange relies on the marking of an order as an ISO order when handling such order, and thus, it is the entering Options Member's responsibility, not the Exchange's responsibility, to comply with the requirements relating to ISOs. ISOs are not eligible for routing pursuant to proposed Rule 22.180. A Market order cannot be designated as an Intermarket Sweep Order. Users may not designate bulk messages as ISOs.

The Exchange notes that each of the proposed Order Types and Handling Instructions available on IEX Options are based upon and substantially similar to those of MEMX, with the exception of the Attributable Orders not offered by MEMX.

Time-in-Force (''TIF'') Designations

Users entering orders into the Trading System may designate such orders to remain in force and available for display and/or potential execution for varying periods of time. Unless cancelled earlier, once these time periods expire, the order (or the unexecuted portion thereof) is returned to the entering party. A TIF applied to a bulk message applies to each bid and offer within that bulk message. Unless otherwise specified in the Exchange Rules or the context indicates otherwise, the Exchange determines which of the following TIFs are available on a class or system basis. The TIF designations available on IEX Options are described in proposed Rule 22.100(g) and will include the following:

• Immediate Or Cancel (''IOC''). IOC means, for an order so designated, an order that is to be executed in whole or in part as soon as such order is received. The portion not so executed immediately on the Exchange or another options exchange is cancelled and is not posted to the IEX Options Book. IOC orders that are not designated as Book Only and that cannot be executed in accordance with proposed Rule 22.170 on the Trading System when reaching the Exchange will be eligible for routing away pursuant to proposed Rule 22.180.

• Day. Day means, for an order so designated, an order to buy or sell which, if not executed expires at market close. Market Makers may designate bulk messages as Day.

The Exchange notes that each of the proposed TIF designations available on IEX Options is identical to the same TIF designations available on MEMX Options, except that they are applied differently in one respect. Specifically, MEMX Options allows bulk messages to have a TIF of IOC. IEX is proposing to only allow bulk messages to have a TIF of DAY so that Market Makers do not take liquidity with quotes submitted via bulk messages, and which are meant for liquidity provision by Market Makers, which by definition the Exchange believes constitutes orders resting on the Order Book.

Anti-Internalization Qualifier (''AIQ'') Modifiers

As with its equities market, the Exchange will allow Users to use certain AIQ modifiers, which are described in proposed Rule 22.100(h). Any incoming order designated with an AIQ modifier will be prevented from executing against a resting opposite side order also designated with an AIQ modifier and originating from the same MPID, Options Member identifier, trading group identifier, or Sponsored Participant identifier. The Exchange will offer the following AIQ modifiers: AIQ Cancel Newest, described in proposed Rule 22.100(h)(1); AIQ Cancel Oldest, described in proposed Rule 22.100(h)(2); AIQ Cancel Both, described in proposed Rule 22.100(h)(3); and AIQ Cancel Smallest, described in proposed Rule 22.100(h)(4). The Exchange notes that each of the proposed AIQ modifiers available on IEX Options is substantially similar to the same modifiers available on MEMX Options[68], with the distinction that on MEMX a market maker may include the AIQ modifier on bulk messages, while IEX is proposing to not allow AIQ modifiers to be included on bulk messages because it would be meaningless on IEX where bulk messages will only be for liquidity adding quotes, and the AIQ modifier that dictates the AIQ interaction is determined by the liquidity removing order.[69]

[67] The proposed definition is substantively identical to the definition in MIAX Rule 516(e). IEX proposes to incorporate this definition and functionality, because MEMX Options does not have Attributable Orders.

[68] MEMX does not offer an AIQ Cancel Smallest modifier, but it is offered by other exchanges such as C1. *See* C1 Rule 5.6 (Match Trade Prevention Modifier—MTP Cancel Smallest).

[69] MEMX calls them ''Match Trade Prevention'' modifiers. *See* MEMX Rule 21.1(h).

Re-Pricing Mechanism

Like other options exchanges, the Exchange proposes to offer a re-pricing mechanism to Users to comply with the order protection and trade through restrictions of the Options Order Protection and Locked/Crossed Market Plan.[70] This re-pricing mechanism, described in proposed Rule 22.100(i), is referred to by the Exchange as Price Adjust and is substantially similar to the Price Adjust mechanism offered by MEMX Options pursuant to MEMX Rule 21.1(i), with the exception that IEX will only allow the ranked price and displayed price of an order that has been repriced to be adjusted to a more aggressive price one additional time (unlike MEMX, which allows multiple adjustments).[71]

MPIDs

As proposed in Rule 22.100(j), the term ''MPID'' means the unique market participant identifier assigned to a User and shall refer to what the Trading System uses to identify the User and the clearing number for the execution of orders and quotes submitted to the Trading System with that MPID. Each MPID corresponds to a single User and a single clearing number of a Clearing Member with the Clearing Corporation. A User may obtain multiple MPIDs, which may be for the same or different clearing numbers. A User is able (in a form and manner determined by the Exchange) to designate which of its MPIDs may be used for each of its ports. If a User submits an order or quote through a port with an MPID not enabled for that port, the Trading System cancels or rejects the order or quote. The Exchange notes that its proposed Rule 22.100(j) is identical to MEMX Rule 21.1(j) except that MEMX uses the term EFID rather than MPID.

Ports and Bulk Messages

Proposed Rule 22.100(k) defines two types of ports: (1) a ''physical port,'' which provides a physical connection to the Trading System and may provide access to multiple logical ports; and (2) a ''logical port'' or ''application session,'' which provides Users with the ability within the Trading System to accomplish a specific function through a connection, such as order entry, data receipt, or access to information. The Exchange notes that each of the proposed types of ports available on IEX Options is identical to the same types of ports on MEMX Options.

The term ''bulk message'' is proposed to mean a single electronic message a User submits with a Market Maker Capacity to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers (which number the Exchange will announce via Exchange notice and publicly available technical specifications). The Trading System handles a bulk message in the same manner as it handles an order or quote, unless the Exchange Rules specify otherwise.

Only Market Makers may submit bulk messages through a logical port in a class in which the Market Maker has an appointment. In addition, bulk messages have a default TIF of Day and a default designation of Post Only. As proposed, the Trading System will cancel, reject, or reprice a Post Only bulk message bid (offer) with a price that locks or crosses the Exchange best offer (bid) or ABO (ABB).[72] These provisions are similar to the manner in which market maker bulk messages are handled by MEMX, which allows bulk messages to also have a TIF of IOC, a designation as book only, and post only bulk messages in unassigned classes.[73]

Cancel Back

The term ''Cancel Back'' is proposed to mean an instruction a User designates on an order (including bulk messages) to not be subject to the Price Adjust process pursuant to proposed Rule 22.100(i). The Trading System cancels or rejects an order with a Cancel Back instruction (immediately at the time the Trading System receives the order or upon return to the Trading System after being routed away) if displaying the order on the Book would create a violation of proposed Rule 28.120, or if the order cannot otherwise be executed or displayed in the Book at its limit price. The Trading System executes a Book Only—Cancel Back order against resting orders. The proposed definition of Cancel Back in proposed Rule 22.100(m) is substantively identical to a Cancel Back Order defined in MEMX Rule 21.1(m).

Market Opening Procedures

As proposed, the Trading System will accept quotes, Limit orders with a TIF of DAY and Market orders for inclusion in the opening process (''Opening Process'') beginning at 8:00 a.m. or immediately upon trading being halted in an options series due to the primary listing market for the applicable underlying security declaring a regulatory trading halt, suspension, or pause with respect to such security (a ''Regulatory Halt''), and will continue to accept Market and Limit orders and quotes until such time as the Opening Process is initiated in that options series (the ''Pre-open state'').[74]

After the first transaction on the primary listing market after 9:30 a.m. in the securities underlying the options as reported on the first print disseminated pursuant to an effective national market system plan or the Regulatory Halt has been lifted, the related options series will be opened automatically as described below. The Exchange will conduct its ''Core Open Auction'' for each series of options contracts upon receipt of an ''Auction Trigger'', *i.e.,* the moment that the Primary Market for the underlying security first disseminates both a two-sided quote and a trade of any size that is at or within the quote (in the case of reopening after a Regulatory Halt, the Auction Trigger also includes notification that the underlying stock is no longer halted).[75] The Exchange will disseminate a message to market participants indicating the initiation of the opening process, conduct the opening auction, and then transition to continuous trading for each series of options contracts.[76] The proposed market opening procedures are substantially similar to the market opening procedures specified in NYSE Arca Options Rule 6.64P–O, subject to several differences, most notably that any imbalance would be allocated on a pro rata basis.[77]

[70] *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (Aug. 6, 2009) (File No. 4–546).

[71] The Exchange notes that this behavior is substantially similar to the ''single price adjust'' behavior in C1 Rule 5.32(b)(2)(A).

[72] *See* proposed IEX Rule 22.100.

[73] *See* MEMX Rule 21.1(l). IEX notes that the ability of the Trading System to cancel or reject a post only order submitted on a bulk port with a price that locks or crosses the Exchange best offer (bid) or ABO (ABB) is substantively identical to MEMX Rule 21.1(l)(3); IEX will also allow the Trading System to reprice a post only order submitted on a bulk port with a price that locks or crosses the Exchange best offer (bid) or ABO (ABB), which is substantively identical to the functionality in C1 Rule 5.32(b)(1)(B).

[74] *See* proposed Rule 22.160(a)(13).

[75] *See* proposed Rule 22.160(a)(5) and (7).

[76] *See* proposed Rule 22.160. IEX notes that pursuant to proposed Rule 22.160(b)(3), the priority overlays specified in proposed Rule 22.170(f)(2) and (3) will not be available during an Auction, but will resume once the Exchange has transitioned to continuous trading.

[77] *See* proposed Rule 22.160(b). Other differences include: IEX will begin accepting orders for the opening auction at 8:00 a.m., while NYSE Arca begins accepting orders for their opening auction at 6:00 a.m. *See* proposed Rule 22.160(a)(13)(A) versus NYSE Arca Options Rule 6.64P–O(a)(12)(A). Additionally, IEX will begin disseminating Auction Imbalance Information at 8:30 a.m., while NYSE Arca begins disseminating imbalance information at 8:00 a.m. *See* proposed Rule 22.160(c)(1) versus NYSE Arca Options Rule 6.64P–O(c)(1). Further,

Continued

Order Display/Matching System

The Trading System will be based upon functionality currently approved for use in the Exchange's equities trading system. Specifically, the Trading System will allow Users to enter Market orders and priced Limit orders to buy (bids) and sell (offers). All bids or offers made and accepted on IEX Options in accordance with the Exchange Rules shall constitute binding contracts, subject to applicable requirements of the Exchange Rules and the Rules of the Clearing Corporation. Such orders are executable against marketable contra-side orders in the Trading System.[78] Resting quotes and orders on the IEX Options Book will be prioritized according to price. If there are two or more quotes or orders at the best price, then the options contracts will be allocated proportionally according to size (in a pro-rata fashion), rounded down to the nearest contract. If there are residual options contracts to be filled, the quote or order with the largest remaining size (based on the pro rata calculation) will receive the first contract, and each successive contract (if any) will be allocated to each subsequent quote or order based on size (largest to smallest). If there are two or more quotes or orders with the same remaining size, then the quote or order with the first time priority will be allocated the next options contract. Each successive options contract (if any) will be allocated in the same manner.[79]

Routing

IEX Options will offer a simple optional routing functionality to facilitate compliance with applicable regulations and will not offer other complex routing strategies. Options Members can designate orders that have not been executed in full by the Trading System pursuant to Rule 22.170 above as either available for routing or not available for routing.[80] IEX Options will support orders that are designated to be routed to the NBBO as well as orders that will execute only within IEX Options. Orders that are designated to execute at the NBBO will be routed to other options markets to be executed when the Exchange is not at the NBBO[81] consistent with the Options Order Protection and Locked/Crossed Market Plan.[82]

Subject to the exceptions contained in proposed Rule 28.110(b), the Trading System will ensure that an order will not be executed at a price that trades through another options exchange. An order that is designated by an Options Member as routable will be routed in compliance with applicable trade-through restrictions. Any order entered with a price that would lock or cross a Protected Quotation that is not eligible for either routing or the price adjust process as defined in proposed Rule 22.100(i) will be cancelled. Bulk messages are not eligible for routing.

IEX Options will route orders in options via IEX Services LLC (''IEX Services''), which serves as the Outbound Router of the Exchange, as defined in Rule 2.220 (IEX Services LLC as Outbound Router).[83] The function of the Outbound Router will be to route orders in options listed and open for trading on IEX Options by transmitting such orders to one or more routing brokers that are not affiliated with the Exchange to other options exchanges (''Routing Services'') pursuant to the Exchange Rules on behalf of IEX Options.[84] The Outbound Router is subject to regulation as a facility of the Exchange, including the requirement to file proposed rule changes under Section 19 of the Exchange Act.[85] Parties that do not desire to use the Routing Services provided by the Exchange must designate orders as not available for routing.[86] The Exchange notes that the proposed rules relating to the routing of orders on IEX Options to away options markets are substantively identical to the MEMX Back-Up Order Routing Services described in MEMX Rule 21.9(e).[87]

Priority of Routed Orders

Orders that have been routed by the Trading System to other options exchanges are not ranked and maintained in the IEX Options Book pursuant to Rule 22.170, and therefore are not available to execute against incoming orders. Once routed by the Trading System, an order becomes subject to the rules and procedures of the destination options exchange including, but not limited to, order cancellation. If a routed order is subsequently returned, in whole or in part, that order, or its remainder, shall receive a new time stamp reflecting the time of its return to the Trading System.[88]

Market Access

In connection with the proposed rules regarding routing to away options exchanges, proposed Rule 22.180(e) provides that IEX Services has, pursuant to Rule 15c3–5 under the Act,[89] implemented certain tests designed to mitigate the financial and regulatory risks associated with providing the Exchange's Users with access to such away options exchanges. Pursuant to the policies and procedures developed by IEX Services to comply with Rule 15c3–5, if an order or series of orders are deemed to be erroneous or duplicative, would cause the entering User's credit exposure to exceed a preset credit threshold, or are non-compliant with applicable pre-trade regulatory requirements (as defined in Rule 15c3–5), IEX Services will reject such orders prior to routing and/or seek to cancel any orders that have been routed. This is consistent with the routing implementation of other options exchanges, and the Exchange notes that proposed Rule 22.180(e) is substantively identical to MEMX Rule 21.9(f).

Order Priority

After the opening, trades on the Exchange will occur when a buy order/quote and a sell order/quote match on the Exchange's order book. The Trading System shall execute trading interest within the Trading System in price priority, meaning it will execute all trading interest at the best price level within the Trading System before executing trading interest at the next best price. Pursuant to proposed Rule 22.170, after considering price priority, all options contracts are allocated proportionally according to size (in a pro-rata fashion). If the executed quantity cannot be evenly allocated, the remaining options contracts will be distributed one at a time based upon price-size-time priority.

In addition, the Exchange supports multiple priority overlays that apply ahead of the default pro-rata allocation at a given price level. Pursuant to proposed Rule 22.170(f),[90] these priority

IEX does not define Far Clearing Price, because IEX does not propose to have Auction Only orders, to which the Far Clearing Price relates.

[78] *See* proposed Rule 22.170.

[79] *See* proposed Rule 22.170(b). This pro-rata allocation methodology is based upon the substantially similar methodology in MIAX Rule 514(c)(2) and NYSE Amex Rule 964NYP(i)(2).

[80] *See* proposed Rule 22.180(a).

[81] As described *infra,* if the order is eligible for the Step-Up Mechanism (set forth in proposed Rule 22.270), the Trading System will attempt to fill the order before routing it to an away market.

[82] *See supra* note 70.

[83] *See* proposed Rule 22.180(d).

[84] *Id.*

[85] *Id.*

[86] *Id.*

[87] MEMX also offers the option of using its outbound router, MEMX Execution Services to route directly to other exchanges. *See* MEMX Rule 21.9(d). IEX is not proposing to adopt this functionality, because it will only provide for routing through IEX Services to third party broker dealers.

[88] *See* proposed Rule 22.180(b).

[89] 17 CFR 240.15c3–5.

[90] Proposed Rule 22.170(f) is based upon and substantially similar to C1 Rule 5.32(a)(2), except is

overlays are made available at the Exchange's discretion on a class-by-class basis: (1) the Priority Customer overlay,[91] which provides resting interest from Priority Customers with priority over all non-Priority Customer interest at the same price, will always take priority over all other priority overlays; (2) the Specialist Participation Entitlement overlay,[92] which provides the Specialist with priority over interest from other non-Priority Customers for a certain percentage of contracts allocated at the same price (entitling the Specialist to 60% of the allocation if there is another non-Priority Customer at the NBBO or 40% if there are two or more other non-Priority Customers at the NBBO[93]) when quoting at the NBBO, inclusive of the case in which the order is directed to the Specialist; (3) the Directed Market Maker Participation Entitlement overlay,[94] which provides a Directed Market Maker with priority over interest from other non-Priority Customers for a certain percentage of contracts allocated at the same price (entitling the DMM to 60% of the allocation if there is another non-Priority Customer at the NBBO or 40% if there are two or more other non-Priority Customers at the NBBO[95]) when quoting at the NBBO and always applies in place of the Specialist Participation Entitlement overlay when both are in effect and the order is directed to a Directed Market Maker other than the Specialist; [96] and (4) the Small-Size Order Entitlement overlay,[97] which provides a Specialist quoting at the NBBO the priority to execute against the entire size of an order or quote of five or fewer contracts that does not first execute against any Priority Customer orders at that price, provided that if an order subject to the Small-Size Order Entitlement is directed to a Directed Market Maker who is not the Specialist quoting at the NBBO, and the Directed Market Maker priority overlay is enabled in the series, then the Directed Market Maker Participation Entitlement priority overlay will apply instead of the Small-Size Order Entitlement priority overlay [98], and in the case that an order subject to the Small-Size Order Entitlement is directed to the Specialist, the Small-Size Order Entitlement priority overlay will apply while the Specialist Participation Entitlement and Directed Market Maker Entitlement overlays will not.[99]

After executions resulting from the Priority Overlays described above, orders and quotes within the Trading System for the accounts of non-Priority Customers, including Professional Customers, have next priority. If there is more than one highest bid or more than one lowest offer on the Options Order Book for the account of a non-Priority Customer, then such bids or offers will be afforded priority on a size pro-rata basis, as described above.

Step Up Mechanism

IEX proposes to offer Options Members an optional Step Up Mechanism (''SUM''), which is a feature within the Trading System that provides automated order handling in designated classes trading for qualifying orders that are not automatically executed by the Trading System.[100] The Exchange will determine eligibility of an order for the SUM (including order size, type, capacity, handling instructions, as well as which classes of options contracts). The Exchange will not initiate the SUM process if the NBBO is crossed.[101] SUM automatically processes upon receipt of an eligible order that is marketable against the BBO that is not the NBBO; or an eligible order that would improve the Exchange's BBO and that is marketable against the ABBO. This proposed functionality is substantively identical to the Step-Up Mechanism offered by C1, with the exception that IEX is not proposing to offer All or None orders.[102] IEX notes that the optional SUM mechanism is designed to benefit a routable order that is not immediately eligible for execution on the Exchange, but if routed to an away exchange might miss a potential execution on that exchange. And, because SUM is optional, a Member can choose not to have its order subject to the SUM mechanism if it determines that the functionality is not consistent with its objectives. Given the multitude of tradeable listed options securities (compared to listed equities) not all available liquidity is always reflected in an exchange's order book, and the SUM mechanism provides an opportunity to source such additional liquidity to the benefit of the order in question. Moreover, IEX notes as well that other options exchanges offer similar mechanisms, and order flow might be directed to such exchanges if IEX did not offer such a mechanism.

Upon receipt of a SUM eligible order, the Trading System will expose the order at the NBBO upon receipt for a period of time determined by the Exchange on a class-by-class basis, which period of time may not exceed one second. All Users may submit responses to the exposure message, which must be limited to the size of the order being exposed, may be modified, cancelled or replaced any time during the exposure period, and are cancelled back at the end of the exposure period if unexecuted. Responses priced at the prevailing NBBO or better will immediately trade against the order in time priority. If during the exposure period the Exchange receives an unrelated order (or quote) on the opposite side of the market from the exposed order that could trade against the exposed order at the prevailing NBBO price or better, then the orders will trade at the prevailing NBBO price. The exposure period will not terminate if a quantity remains on the exposed order after such trade.

Responses that are not immediately executable based on the prevailing NBBO may become executable during the exposure period based on changes to the NBBO. In the event of a change to the NBBO and at the conclusion of the exposure period, the Exchange will evaluate remaining responses as well as the ABBO and execute any remaining portion of the exposed order to the fullest extent possible at the best price(s) by executing against responses and unrelated orders.

Following the exposure period, the Exchange will route the remaining

different in one respect. Unlike C1, in the event that a Small-Size order is directed to a Specialist, the IEX Options trading system will apply the Small-Size Order Entitlement to the order and not the Directed Order guarantee, meaning the Specialist will have priority to execute against the entire size of the order that does not execute against any Priority Customer orders at that price.

[91] *See* proposed Rule 22.170(f)(1).

[92] *See* proposed Rule 22.170(f)(2). This overlay may only be in effect if the Priority Customer overlay is also in effect. *See* proposed Rule 22.170(f).

[93] These allocation entitlements are based on MIAX Rule 514(h)(1), after accounting for the additional priorities afforded market makers on MIAX, as set forth in MIAX Rule 514(e). *See supra* note 79 and accompanying text.

[94] *See* proposed Rule 22.170(f)(2). This overlay may only be in effect if the Priority Customer overlay is also in effect. *See* proposed Rule 22.170(f).

[95] These allocation entitlements are based on MIAX Rule 514(h)(1), after accounting for the additional priorities afforded market makers on MIAX, as set forth in MIAX Rule 514(e). *See supra* note 79 and accompanying text.

[96] Prioritizing the DMM entitlement over the Specialist entitlement in these circumstances is the same functionality offered by several other exchanges. *See, e.g.,* NYSE Amex Options Rule 964NYP(h)(1).

[97] *See* proposed Rule 22.170(f)(3).

[98] *See* proposed Rule 22.170(f)(3)(A).

[99] *See* proposed Rule 22.170(f)(3)(B). This is functionally identical to how NYSE Amex Options allocates small-size Directed Orders that are directed to a Specialist. *See* NYSE Amex Options Rule 965NYP(h)(2)(B).

[100] *See* proposed Rule 22.270. IEX's proposed Step-Up Mechanism is substantively identical to C1 Rule 5.35.

[101] *See* proposed Rule 22.270(a).

[102] *See* C1 Rule 5.35.

portion of the exposed order to other exchanges, unless otherwise instructed by the User. Any portion of a routed order that returns unfilled shall trade against the Exchange's best bid/offer unless another exchange is quoting at a better price in which case new orders shall be generated and routed to trade against such better prices.

Data Dissemination

The Exchange will disseminate to OPRA the highest bid and the lowest offer, and the aggregate quotation size associated therewith that is available, in accordance with the requirements of Rule 602 of Regulation NMS under the Act.[103] The Exchange will also offer three data products: (1) IEX Options DEEP: an uncompressed data feed that offers depth of book quotations and execution information based on options orders entered into the Trading System; (2) IEX Options TOPS: an uncompressed data feed that offers top of book quotations and execution information based on options orders entered into the Trading System; and (3) DROP: an uncompressed data feed that offers information regarding the options trading activity of a specific User.[104] DROP is only available to the User to whom the specific data relates and those recipients expressly authorized by the User.[105]

Risk Controls

The Exchange also proposes to offer to all Users of IEX Options the ability to establish certain risk control parameters and limits that are intended to assist Users in managing their market risk. The proposed risk controls are based, in part, on those of the NYSE Arca and C1 options exchanges, with certain additions and differences described below. The proposed risk controls are designed to offer Users protection from entering orders outside of certain size and price parameters, as well as certain standard or Exchange-established parameters based on order type and market conditions.

The proposed risk controls include: (i) pre-trade risk controls; (ii) activity-based risk controls; and (iii) global risk controls, as set forth in proposed Rule 22.250.[106] Pre-trade, activity-based, and global risk controls may be set before the beginning of a trading day.[107] Pre-trade, activity-based, and global risk controls can be set at the MPID or MPID Group level,[108] or both, depending on the risk control.[109] Additionally, pre-trade risk controls to restrict the options class(es) transacted must be set per options class.[110] The following describes each category of risk protection mechanism:

Pre-Trade Risk Controls [111]

The pre-trade risk controls mechanism is a set of optional limits, each of which an Options Member may utilize with respect to its trading activity on the Exchange. These controls include controls related to the maximum dollar amount for a single order to be applied one time and the maximum number of contracts that may be included in a single order before it can be traded. Additionally, there are optional controls related to the price of an order or quote (including percentage-based and dollar-based controls), controls related to the order types or modifiers that can be utilized, controls to restrict the options classes transacted, and controls to prohibit duplicative orders.

Activity-Based Risk Controls [112]

The Exchange also proposes to offer activity-based risk limits that may be applied to orders and quotes in an options class (when acting as a Market Maker, an Options Member is required to select at least one of the following controls [113]) based on specified thresholds measured over the course of a configurable time period (''Interval''). The Exchange will offer the following activity-based risk controls: (i) transaction-based risk limits, which are pre-established limits on the number of an Options Member's orders and quotes executed in a specified class of options per Interval; (ii) volume-based risk limit, which are pre-established limits on the number of contracts of an Options Member's orders and quotes that can be executed in a specified class of options per Interval; and (iii) percentage-based risk limits, which are pre-established limits on the percentage of contracts executed in a specified class of options as measured against the full size of an Options Member's orders and quotes executed per Interval. To determine whether an Options Member has breached the specified percentage limit, the Exchange calculates the percent of each order or quote in a specified class of options that is executed during an Interval (each, a ''percentage''), and sums up those percentages. This risk limit will be breached if the sum of the percentages exceeds the pre-established limit.

Global Risk Control[114]

The Exchange also proposes to offer a global risk control, which is a pre-established limit on the number of times an Options Member may breach its activity-based risk controls per Interval.

Automated Breach Actions [115]

Proposed Rule 22.250(c) details the ''automated breach actions'' the Exchange will take if any of the three above-described risk controls are breached. Based on User preference, these actions can include blocking new orders and quotes, canceling orders and quotes on the Order Book, or notifying the Options Member of the breach. With respect to the activity-based and global risk controls (as well as Kill Switch Actions described below), in order to remain consistent with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS, any marketable interest that is executable against an order or quote that is received [116] prior to the time the applicable threshold is triggered and processed by the Trading System will be automatically executed up to the size of the resting order or quote, regardless of whether the execution would cause the Member to exceed their pre-set risk threshold(s).[117]

[103] *See* proposed Rule 22.240(a).

[104] *See* proposed Rule 22.240(b).

[105] Data products will be subject to fees as specified in an effective Commission rule filing.

[106] Proposed Rule 22.250 is based upon and substantially similar to NYSE Arca Rule 6.40P–O.

[107] *See* proposed Rule 22.250(b)(1).

[108] MPID Groups, defined in proposed Rule 22.250(a)(5), are based upon C1 Rule 5.34(c)(4)(A), which allows for the setting of risk control limits for EFID Groups, which are equivalent to MPID Groups. IEX notes that it proposes to retain the right to limit the number of MPID Groups an Options Member can configure based upon potential technical limitations.

[109] *See* proposed Rule 22.250(b)(2). IEX notes that while it allows these risk controls to be set at MPID or MPID Group levels, NYSE Arca allows the equivalent controls to be set at either the MPID or the MPID Sub-ID level (a more granular level than the MPID).

[110] *See* proposed Rule 22.250(b)(2).

[111] *See* proposed Rule 22.250(a)(1), which is substantively identical to NYSE Arca Rule 6.40P–O(a)(2).

[112] *See* proposed Rule 22.250(a)(2), which is substantively identical to NYSE Arca Rule 6.40P–O(a)(3).

[113] *See* proposed Rule 22.250(c)(2)(A).

[114] *See* proposed Rule 22.250(a)(3), which is substantively identical to NYSE Arca Options Rule 6.40P–O(a)(4).

[115] *See* proposed Rule 22.250(c), which is substantively identical to NYSE Arca Options Rule 6.40P–O(c).

[116] The time of receipt for an order or quote is the time such message is processed by the Exchange's order book.

[117] Pre-trade risk controls are implemented prior to an order or quote resting on the order book (or being placed on the book again following an auction) and therefore do not implicate firm quote obligations.

Kill Switch Actions [118]

Additionally, Options Members may direct the Exchange to operate a ''kill switch'' to either cancel all unexecuted orders and quotes on the Order Book, block the entry of any new order and quote messages, or both.

Limit Order Price Protection [119]

The Exchange also proposes to offer price protection mechanisms, as set forth in proposed Rule 22.260.[120] These protections include Limit Order Price Protection, in which the Trading System will reject an order or quote upon entry, or cancel at the conclusion of an auction, if its price exceeds a pre-established, Exchange-defined ''specified threshold'' amount above or below the reference price. The Reference Price for calculating Limit Order Price Protection for an order or quote to buy (sell) will be the NBO (NBB), provided that, immediately following an auction, the reference price will be the price at which the auction match occurred, or, if none, the upper (lower) auction collar price, or, if none, the NBO (NBB).

Market Orders in No-Bid (Offer) Series [121]

If the Trading System receives a sell Market order in a series after it is open for trading with an NBB of zero and an NBO less than or equal to $0.50, then the Trading System converts the Market order to a Limit order with a limit price equal to the minimum trading increment applicable to the series and enters the order into the IEX Options. If the Trading System receives a sell Market order in a series after it is open for trading with an NBB of zero and an NBO greater than $0.50, then the Trading System cancels or rejects the Market order, except if the sell Market order would be subject to the drill-through protection (as discussed below), in which case the order joins the ongoing drill-through process. If the Trading System receives a buy Market order in a series after it is open for trading with an NBO of zero, the Trading System cancels or rejects the Market order.

Market Order NBBO Width Protection [122]

If a User submits a Market order to the Trading System when the NBBO width is greater than x% of the midpoint of the NBBO, subject to a minimum and maximum dollar value (the Exchange determines ''x'' and the minimum and maximum dollar values on a class-by-class basis), the Trading System cancels or rejects the Market order.

Price Reasonability Checks [123]

Additionally, the Exchange will apply price reasonability checks to most Limit orders and quotes during continuous trading on each trading day. One price reasonability check, the ''arbitrage check'', will reject order or quote messages to buy put options if the price of the order is equal to or greater than the strike price of the option and will reject (or cancel, if resting) order or quote messages to buy call options if the price of the order is equal to or greater than the price of the last trade in the underlying security plus an Exchange-defined specified threshold.[124] Another price reasonability check, the ''intrinsic value check'', will assess the intrinsic value of an option based on the last sale price of the underlying security (for calls) or the strike price of the option (for puts), and reject or cancel certain orders or quotes if the price of the order is dislocated from the intrinsic value of the option by a certain Exchange-defined specified threshold.[125]

Drill-Through Protection

Another proposed price protection mechanism is drill-through protection, which will prevent an order from executing beyond a ''buffer amount'' determined based on a drill-through price.[126] This rule is based upon and substantially similar to C1 Rule 5.34(a)(4), with the distinction that IEX's Drill-Through Protection will have a finite, Exchange-defined number of iterations, that are communicated by a Trading Alert with at least 30 days prior notice.[127] IEX notes that other exchanges have also set a finite number of iterations for their Drill-Through Protection.[128]

Options Risk Parameter

In order to provide additional protection to Market Makers to address structural challenges [129] they face in the listed options market, IEX proposes to offer an optional quote parameter that would augment the standard risk tools that will be available to Options Market Makers referred to as the Options Risk Parameter (''ORP''). As proposed, the ORP will be a parameter that can be applied to a quotation that rests on the Order Book at the price designated by the Market Maker that entered the quotation. When the ORP is triggered based on pre-defined criteria, the relevant quotation(s) will be adjusted in a manner specified transparently in IEX's rules and related Trading Alerts, as described below.[130]

The ORP would leverage IEX's proprietary mathematical formula—the Options Quote Indicator (the ''Indicator'')—which is based on the preeminent Black-Scholes options pricing model. This Nobel-Prize-winning approach for evaluating the price of an options contract has been studied extensively, and is widely considered as a primary starting point for both academic and industrial options pricing applications.[131]

Proposed Rule 23.150(h) sets forth the application of the Indicator and optional ORP. As with the standard risk checks, the ORP is designed to enable Market Makers to provide tighter and deeper quotes on IEX by providing protection from execution against stale quotes by identifying when the best Protected Bid or best Protected Offer of the Away Markets (as defined in Proposed Rule 22.160(a)(8)) in a particular options series is sufficiently dislocated from the price of the underlying security to indicate that the best Protected Bid or best Protected Offer of the Away Markets in the options series is likely in transition.

[118] *See* proposed Rule 22.250(e), which is substantively identical to NYSE Arca Options Rule 6.40P–O(e).

[119] *See* proposed Rule 22.260(a), which is substantively identical to NYSE Arca Options Rule 6.62P–O(a)(3).

[120] IEX notes that these proposed risk control mechanisms are based on similar rules of other options exchanges, in particular: NYSE Arca Options Rules 6.62P–O(a)(3) and 6.41P–O and C1 Rules 5.34(a)(1), (2) and (4).

[121] *See* proposed Rule 22.260(b), which is substantively identical to C1 Rule 5.34(a)(1).

[122] *See* proposed Rule 22.260(c), which is substantively identical to C1 Rule 5.34(a)(2).

[123] *See* proposed Rule 22.260(d), which is substantively identical to NYSE Arca Options Rule 6.41P–O.

[124] *See* proposed Rule 22.260(d)(2), which is substantively identical to NYSE Arca Options Rule 6.41P–O(b).

[125] *See* proposed Rule 22.260(d)(3), which is substantively identical to NYSE Arca Options Rule 6.41P–O(c). IEX notes that like NYSE Arca Options, the term ''Automated Breach Action'' is used in two of its risk controls with different meanings: first with respect to the intrinsic value risk checks for market makers, *see* NYSE Arca Options Rule 6.40P–O(d) and proposed Rule 22.260(d)(3)(E); and also with respect to activity based risk controls. *See* NYSE Arca Options Rule 6.41P–O(d) and proposed Rule 22.250(c).

[126] *See* proposed Rule 22.260(e).

[127] IEX notes that other exchanges also have the ability to change any exchange-determined parameters with a trading alert. *See, e.g.,* C1 Rule 1.5.

[128] *See, e.g.,* Securities Exchange Act Release No. 86923 (September 10, 2019), 84 FR 48664 (September 16, 2019) (SR–CBOE–2019–057) with respect to C1 prior functionality.

[129] *See infra* note 135.

[130] *See* proposed IEX Rule 23.150(h).

[131] *See* Revolutionary Black-Scholes Option Pricing Model is Published by Fischer Black, Later a Partner at Goldman Sachs, available at *https://www.goldmansachs.com/our-firm/history/moments/1973-black-scholes.*

As proposed, the Exchange will utilize the Indicator, which is a fixed formula specified transparently in IEX's rules and related Trading Alerts, to assess the probability of an imminent change to the current best Protected Bid [132] of the Away Markets to a lower price or of an imminent change to the current best Protected Offer [133] of the Away Markets to a higher price for a particular listed options series (*i.e.,* an imminent adverse price change).[134] The Indicator utilizes real time relative quoting activity of protected quotations from Signal Exchanges (as defined in IEX Rule 11.190(g)) in securities underlying each listed options series and a proprietary mathematical calculation (the ''quote instability calculation''), as described in more detail below, to make such assessments. When the quote instability calculation identifies an imminent adverse price change to the best Protected Bid and/or best Protected Offer of the Away Markets in a particular listed options series, it will generate a quote instability determination. A quote instability determination may only be generated at least 200 microseconds after a prior quote instability determination for a particular options series on the same side of the market (*i.e.,* affecting resting bids or offers).

[132] *See supra* note 70 at 39370.

[133] *Id.*

[134] *See* proposed IEX Rule 23.150(h). Two aspects of the formula—including the frequency of calculation of implied volatility and the quote instability threshold—will be periodically determined by the Exchange and communicated by Trading Alert with at least 30 days' notice. The Exchange believes that providing at least 30 days' notice of these discrete identified aspects will provide appropriate notice to market participants and give the Exchange the ability to adapt to changing market conditions and optimize the protections provided. The Exchange further notes that other options exchanges specify various rule-based values by similar publication approaches, *see, e.g.,* NYSE Amex Rule 994NY (providing that the exposure period for its Broadcast Order Liquidity Delivery Mechanism is determined and released by the exchange); *see also* MIAX Rule 515(c)(1) (providing price protections where certain minimum price variations are determined by MIAX within a specified range and announced through regulatory circulars); *see also* Nasdaq Stock Market LLC Dynamic M–ELO algorithm (providing updates that include determining the holding period for impacted orders that are announced by trading alerts).

[135] *See* Staff Report on Equity and Options Market Structure Conditions in Early 2021, (Oct. 14, 2021) at 4 (explaining that options market structure is broadly similar to equities market structure and noting a key difference that displayed liquidity is primarily derived from market maker quotes), available at *https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf; see also* Lehoczky, Sandor and Woods, Ellen and Russell, Matthew and Nguyen, Mina and Somers, James, Dead Man's Switch: Making Options Markets Safer with Active Quote Protection (May 2020) at 2 (explaining that options markets ''depend especially on market makers—who account for 99.9% of open orders—to connect buyers and sellers, due to a combinatorial explosion of expirations and strike prices''), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3675849.*

IEX believes that offering this optional risk protection for market makers is particularly important in the options markets where market makers are exposed to added risk given their continuous quoting obligations. Although equities and options exchanges share a number of similarities, a meaningful difference is that in the listed options market, liquidity is available only on-exchange and is primarily displayed and derived from market maker quotes, and options markets, when compared to equities markets, have a much higher quote to trade ratio.[135] Exchange market makers in the listed options market play an essential role in providing liquidity. Moreover, given the sheer difference in magnitude of tradeable instruments in listed options as compared to equities (approximately 1.5 million listed options series compared to approximately 11,000 listed equity securities), the options exchanges often do not have the same sources of natural liquidity of buyers and sellers for each tradeable instrument as is generally the case for equities exchanges. Thus, options market makers are tasked with affirmative obligations to support the provision of liquidity to options exchanges through continuous two-sided quotes in large numbers of listed options series. As a result, IEX understands that options market makers can be subject to excessive risk of one or more quotes being executed at stale prices compared to equities market makers or other liquidity providers.[136] Because options market makers maintain hundreds (and sometimes thousands) of quotes on options for a given underlying security at any one time, a sudden market move in the underlying security can leave an options market maker vulnerable to being executed across multiple quotes that are stale and dislocated from the price of the underlying securities. Liquidity takers can target one or more of these stale quotes, with limited risk should they fail to execute (*i.e.,* lost opportunity vs. trading at a stale price), before the Market Makers are able to move their quotes (often hundreds or more for a given underlying) to reflect the price change in the underlying securities, thereby exposing those Market Makers to potentially major losses.

[136] *See, e.g.,* Protecting Liquidity in Options Markets, Market Structure, Optiver, July 12, 2023 (concluding that ''liquidity protection improves options markets'' by safeguarding market makers against ''excessive risk'' that results from ''liquidity providers maintain[ing] hundreds of quotes on a given underlying at any one time [and] a sudden market move can leave them vulnerable to showing stale, or outdated, quotes,'' thereby ''exposing them to potentially major losses'' if unable to amend or cancel quotes before executed), available at *https://optiver.com/insights/protecting-liquidity-in-options-markets/.*

Without robust liquidity protection mechanisms to protect against these risks, Market Makers may be forced to widen their spreads, show less liquidity, or simply exit the market. Overall market quality could deteriorate as a result, and investors would suffer when it becomes too expensive to transact, or when there is insufficient liquidity to enable transacting altogether. Accordingly, liquidity protection mechanisms for market makers, which all options exchanges offer, and IEX proposes to offer, are vital for achieving a healthy balance between market makers and liquidity takers in the listed options market. These include, but are not limited to, activity-based risk controls, price reasonability checks, and functionality (such as bulk quoting and purge ports) to facilitate timely quoting, quote updates, and quote cancelation.

For each options series, the Trading System will maintain a real-time estimate of the sensitivity of the series to changes in the midpoint of the best Protected Bid and best Protected Offer of the Signal Exchanges for the underlying security (based on a Black-Scholes assessment). When there is a change in the best Protected Bid or best Protected Offer of the Signal Exchanges for the underlying security, the Trading System will use the quote instability calculation formula set forth in proposed IEX Rule 23.150(h) to calculate whether to generate a quote instability determination for each options series overlying the underlying security. The Trading System independently assesses whether to generate a quote instability determination affecting resting bids or offers for each options series. A quote instability determination is generated by the Trading System when, pursuant to the quote instability calculation, the quote instability factor is greater than the defined quote instability threshold.

If a Market Maker has opted to utilize the ORP and its quote in an options series that was the subject of a quote instability determination is at or above (below) the price level of the quote instability determination for the options series, the Trading System will either cancel the Market Maker's quote or reprice it to one MPV [137] below (above) the price level of the quote instability determination, pursuant to the Market

Maker's instruction. Notwithstanding this functionality, a Market Maker will be able to adjust the price of its quote in the same manner as other Market Maker quotes that have not opted into the ORP.

One Second Exposure Period

Proposed Rule 23.200 would require Options Members to expose their customers' orders on the Exchange for at least one second under certain circumstances before trading against such orders. During this one second exposure period, other Options Members will be able to enter orders to trade against the exposed order. In adopting a one second order exposure period, the Exchange is proposing a requirement that is consistent with the rules of other options exchanges.[138] Thus, the exposure period will allow Options Members that are members of other options exchanges to comply with proposed Rule 23.200 without programming separate time parameters into their systems for order entry or compliance purposes. The Exchange believes that market participants are sufficiently automated that a one second exposure period allows an adequate time for market participants to electronically respond to an order. Also, it is possible that market participants might wait until the end of the exposure period, no matter how long, before responding. Thus, the Exchange believes that any longer than one second would not further the protection of investors or market participants, but rather, would potentially increase market risk to investors and other market participants by creating a longer period of time for the exposed order to be subject to market risk.

Options Order Protection and Locked/Crossed Market Plan Rules

The Exchange will participate in the Options Order Protection and Locked/Crossed Market Plan (the ''Plan''),[139] and therefore will be required to comply with the obligations of Participants under the Plan. The Exchange proposes to adopt rules relating to the Plan that are substantially similar to the rules in place on all of the options exchanges that are Participants to the Plan. The Plan essentially applies the Regulation NMS price-protection provisions to the options markets. Similar to Regulation NMS, the Plan requires the Plan Participants to adopt rules ''reasonably designed to prevent Trade-Throughs'', while exempting ISOs from that prohibition. The Plan's definition of an ISO is essentially the same as under Regulation NMS. The remaining exceptions to the trade-through prohibition, discussed more specifically below, either track those under Regulation NMS or correspond to unique aspects of the options market, or both.

The proposed rules in Chapter 28 (Options Order Protection and Locked and Crossed Markets Rules) conform to the requirements of the Plan. Proposed Rule 28.100 sets forth the defined terms for use under the Plan. Proposed Rule 28.110 prohibits trade-throughs and exempts ISOs from that prohibition. Proposed Rule 28.110 also contains additional exceptions to the trade-through prohibition that track the exceptions under Regulation NMS or correspond to unique aspects of the options market, or both.

Proposed Rule 28.120 sets forth the general prohibition against locking/crossing other eligible exchanges as well as certain enumerated exceptions that permit locked markets in limited circumstances; such exceptions have been approved by the Commission for inclusion in the rules of other options exchanges. Specifically, the exceptions to the general prohibition on locking and crossing occur when: (1) the locking or crossing quotation was displayed at a time when the Exchange was experiencing a failure, material delay, or malfunction of its systems or equipment; (2) the locking or crossing quotation was displayed at a time when there is a Crossed Market; (3) the Options Member simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer; or (4) with respect to a locking quotation, the order entered on the Exchange that will lock a Protected Bid or Protected Offer, is: (i) not a Customer order, and the Exchange can determine via identification available pursuant to the OPRA Plan that such Protected Bid or Protected Offer does not represent, in whole or in part, a Customer order; or (ii) a Customer order, and the Exchange can determine via identification available pursuant to the OPRA Plan that such Protected Bid or Protected Offer does not represent, in whole or in part, a Customer order, and, on a case-by-case basis, the Customer specifically authorizes the Member to lock such Protected Bid or Protected Offer.[140]

The Exchange notes that the proposed rules in Chapter 28 (Options Order Protection and Locked and Crossed Markets Rules) are substantively identical to the rules of MEMX Options.[141]

Securities Traded on IEX Options

General Listing Standards

The Exchange proposes to adopt listing standards for options traded on IEX Options as described in Chapter 20 (Securities Traded on IEX Options), which are substantively identical to the equivalent MEMX Options rules,[142] with the exception of: (i) some language in Supplementary Material .02 to proposed Rule 20.140 concerning the $1 strike price program which is not included in the equivalent MEMX rule, and therefore borrowed from the equivalent MIAX rule; [143] and (ii) the addition of language allowing the Exchange to list for closing transactions an Options series that is listed but restricted to closing transactions on another exchange.[144] The Exchange will join the Options Listings Procedures Plan and will list and trade options already listed on other options exchanges. The Exchange will gradually phase-in its trading of options, beginning with a selection of actively traded options.

Conduct and Operational Rules for Options Members

The Exchange proposes to adopt rules in Chapter 19 for IEX Options that are substantively identical to the rules of MEMX Options regarding: exercises and deliveries as described in Chapter 24 (Exercises and Deliveries); records, reports and audits as described in Chapter 25 (Records, Reports and Audits); minor rule violations as described in Chapter 26 (Discipline and Summary Suspensions); doing business with the public as described in Chapter 27 (Doing Business With the Public); and margin as described in Chapter 29 (Margin Requirements).[145] The Exchange also proposes to adopt rules that are substantively similar to most of MEMX's Chapter 18 (Business Conduct), with the exception of proposed Rules 19.160 (Position Limits), 19.170 (Exemptions from Position Limits), 19.180 (Exercise Limits) that are

[137] *See* proposed IEX Rule 22.140(a).

[138] *See, e.g.,* MEMX Rule 22.11; C1 Rule 5.9; and MIAX Options Rule 520(b).

[139] *See supra* note 70.

[140] *See* proposed Rule 28.120(b).

[141] *See* MEMX Rule 27.1, 27.2, and 27.3.

[142] *See* MEMX Rules, Chapter 19. IEX notes that the MEMX Rules include Chapter 29: Index Rules. IEX is not proposing to adopt similar rules at this time, and any references to index options in MEMX Chapter 19 are not in proposed IEX Chapter 20.

[143] *See* MIAX Rule 404 Interpretation and Policy .01.

[144] *See* Supplementary Material .01 to proposed Rule 20.130, which mirrors MIAX Rule 403 Interpretation and Policy .01.

[145] *See* MEMX Rules, Chapters 23, 24, 25, 26 and 28.

substantively similar to MIAX Rules 307, 308, and 309, respectively. IEX proposed to adopt MIAX's versions of these rules because they provided specificity about the types of position limits the Exchange will apply to Options Members (as opposed to the MEMX rules, which rely on position limits set by other exchanges).

National Market System

IEX Options will operate as a full and equal participant in the national market system for options trading established under Section 11A of the Exchange Act.[146] IEX Options will become a member of the Options Price Reporting Authority (''OPRA''), the Options Linkage Authority (''OLA''), the Options Regulatory Surveillance Authority (''ORSA''), and the Options Listing Procedures Plan (''OLPP''). The Exchange expects to participate in those plans on the same terms currently applicable to current members of those plans. The Exchange is in the process of contacting the leadership of each options-related national market system plan to begin the membership process.

Regulation

The Exchange will leverage many of the structures it established to operate a national securities exchange trading NMS equities securities, in compliance with Section 6 of the Exchange Act.[147] As described in more detail below, there will be three elements of that regulation: (1) the Exchange will join the existing options industry agreements pursuant to Section 17(d) of the Exchange Act prior to commencing operations,[148] as it did with respect to equities; (2) the Exchange's Regulatory Services Agreement (''RSA'') with FINRA will be amended prior to commencing operations to provide that FINRA will perform regulatory surveillance, investigation, disciplinary and hearing services of options trading on IEX subject to oversight by IEX Regulation, just as it does for equities regulation; and (3) the Exchange will perform options listing regulation, as well as authorize Options Members to trade on IEX Options. Section 17(d) of the Exchange Act and the related Exchange Act rules permit SROs to allocate certain regulatory responsibilities to avoid duplicative oversight and regulation. Under Exchange Act Rule 17d–1,[149] the SEC designates one SRO to be the Designated Examining Authority, or DEA, for each broker-dealer that is a member of more than one SRO. The DEA is responsible for the financial aspects of that broker-dealer's regulatory oversight. Because IEX Options Members also must be members of at least one other SRO, the Exchange would generally not expect to be designated as the DEA for any of its members.[150]

Exchange Act Rule 17d–2 [151] permits SROs to file with the Commission plans under which the SROs allocate among each other the responsibility to receive regulatory reports from, and examine and enforce compliance with specified provisions of the Exchange Act and rules thereunder and SRO rules by, firms that are members of more than one SRO (''common members''). If such a plan is declared effective by the Commission, an SRO that is a party to the plan is relieved of regulatory responsibility as to any common member for whom responsibility is allocated under the plan to another SRO.

All of the options exchanges, FINRA, and NYSE have entered into the Options Sales Practices Agreement, a Rule 17d–2 agreement, and the Exchange intends to join this agreement prior to the commencement of operations for IEX Options. Under this Agreement, the examining SROs will examine firms that are common members of the Exchange and the particular examining SRO for compliance with certain provisions of the Exchange Act, certain of the rules and regulations adopted thereunder, certain examining SRO rules, and certain proposed IEX Options rules. In addition, the proposed IEX Options rules contemplate participation in this Agreement by requiring that any Options Member also be a member of at least one of the examining SROs. The Exchange and FINRA are also party to a bilateral Rule 17d–2 agreement that requires minor modifications due to the proposed launch of IEX Options. The Exchange intends to modify and seek Commission approval of the modified bilateral Rule 17d–2 agreement prior to commencing of operations for IEX Options. Additionally, all of the options exchanges and FINRA have entered into the Options-Related Market Surveillance Agreement, a Rule 17d–2 agreement, and the Exchange intends to join this agreement prior to the commencement of operations for IEX Options.

For those regulatory responsibilities that fall outside the scope of any Rule 17d–2 agreements, the Exchange will retain full regulatory responsibility under the Exchange Act. However, the Exchange has entered into an RSA with FINRA, as discussed above, pursuant to which FINRA personnel operate as agents for the Exchange in performing certain of these functions. The Exchange and FINRA will continue to operate under the RSA that is currently in place but with modifications as necessary to accommodate the expanded scope of the relationship. The necessary modifications will be implemented prior to the commencement of operations of IEX Options. As is the case with the Exchange's equities market, the Exchange will oversee FINRA and continue to bear ultimate regulatory responsibility with respect to regulatory functions not subject to allocation to FINRA or another SRO pursuant to a Rule 17d–2 Agreement for the IEX Options Exchange.

Consistent with the Exchange's existing regulatory structure, the Exchange's Chief Regulatory Officer, reporting to the Regulatory Oversight Committee of the Exchange's board of directors, shall have general supervision of the regulatory operations of IEX Options, including responsibility for overseeing the surveillance, examination, and enforcement functions and for administering all regulatory services agreements applicable to IEX Options. Similarly, the Exchange's existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange's regulatory and self-regulatory organization responsibilities, including those applicable to IEX Options.

As it does with equities, the Exchange will monitor trading on IEX Options, both through internal reports and FINRA surveillances for the purpose of maintaining a fair and orderly market. As it does with its equities trading, the Exchange will monitor IEX Options to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation by FINRA.

Finally, the Exchange will oversee the process for determining and implementing trade halts, identifying and responding to unusual market conditions, and administering the Exchange's process for identifying and remediating ''obvious errors'' by and among its Options Members.[152] The proposed rules in Chapter 21

[146] 15 U.S.C. 78k–1.

[147] 15 U.S.C. 78f.

[148] 15 U.S.C. 78q(d).

[149] 17 CFR 240.17d–1.

[150] If IEX were to be designated as the DEA for any of its members, FINRA would perform the DEA functions on behalf of IEX pursuant to the RSA.

[151] 17 CFR 240.17d–2.

[152] IEX notes that like MEMX Rule 20.6, proposed Rule 21.150 authorizes the proposed Error Panel to review decisions made under this rule, which includes decisions to classify a transaction as a Catastrophic Error.

(Regulation of Trading on IEX Options) regarding halts,[153] unusual market conditions, extraordinary market volatility, obvious errors, audit trail, and rules regarding prohibited and permissible transfers of options positions off the Exchange are substantively identical to the approved rules of MEMX Options.[154]

Minor Rule Violation Plan

The Exchange's disciplinary rules, including Exchange Rules applicable to ''minor rule violations,'' are set forth in Chapter 9 of the Exchange's current Rules. Such disciplinary rules will apply to Options Members and their associated persons.

The Commission approved the Exchange's Minor Rule Violation Plan (''MRVP'') in 2016.[155] The Exchange's MRVP specifies the uncontested minor rule violations that are included in the MRVP and have sanctions not exceeding $2,500. Any violations that are resolved under the MRVP would not be subject to the provisions of Rule 19d–1(c)(1) under the Act [156] requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[157] The Exchange's MRVP includes the policies and procedures included in Exchange Rule 9.216(b) and the violations included in Rule 9.218.

Under Rule 9.216(b), the Exchange may impose a fine (not to exceed $2,500) and/or a censure on any Member or associated person with respect to any rule listed in IEX Rule 9.218. If the Financial Industry Regulatory Authority Department of Enforcement or the Department of Market Regulation, on behalf of the Exchange, has reason to believe a violation has occurred and if the Member or associated person does not dispute the violation, the Department of Enforcement or the Department of Market Regulation may prepare and request that the Member or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive the Member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the IEX Appeals Committee, the Board, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter must describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction imposed will be a date to be determined by IEX Regulation staff. In the event the letter is not accepted by the Member or associated person, or is rejected by the Office of Disciplinary Affairs, the matter can proceed in accordance with the Exchange's disciplinary rules, which include hearing rights for formal disciplinary proceedings.

The Exchange proposes to amend its MRVP and Exchange Rule 9.218 to add certain rules relating to Options as set forth in proposed Rule 26.120 (Penalty for Minor Rule Violations) to the list of rules eligible for Minor Rule Violation Plan treatment.[158] The rules included in proposed Rule 26.120, as appropriate for disposition under the Exchange's MRVP, are: (a) position limit and exercise limit violations; (b) violations regarding the failure to accurately report position and account information; (c) Market Maker quoting obligations; (d) violations regarding expiring exercise declarations; (e) violations relating to the failure to respond to the Exchange's requests for the submission of trade data; and (f) violations relating to noncompliance with the Consolidated Audit Trail Compliance Rule requirements. The rule violations included in proposed Rule 26.120 are the same as the rule violations included in the MRVPs of other options exchanges.[159]

Upon implementation of this proposal, the Exchange will include violations of the enumerated options trading rules, if any, in an applicable Exchange's quarterly report of any actions taken on minor rule violations under the MRVP.[160] A quarterly report would include: the Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition. The Exchange's MRVP, as proposed to be amended herein, is consistent with Sections 6(b)(1), 6(b)(5) and 6(b)(6) of the Act, which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange, 6(b)(6) provides that members and persons and associated members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.[161] Rule violations listed in proposed Rule 26.120 are minor in nature and will be more appropriately disciplined through the Exchange's MRVP and therefore proposes to add them to the list of rules eligible for minor rule fine disposition.

In addition, because Rule 9.216(b) offers procedural rights to a person sanctioned for a violation listed in proposed Rule 26.120, the Exchange will provide a fair procedure for the disciplining of members and associated persons, consistent with Section 6(b)(7) of the Act.[162]

This proposal to include the rules listed in proposed Rule 26.120 in the Exchange's MRVP is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[163] because it should strengthen the Exchange's ability to carry out its oversight and enforcement

[153] Proposed Rule 21.120(b) states that during a trading halt, the Exchange shall process new and existing orders and quotes in a series in accordance with proposed Rule 22.160(g). Proposed Rule 22.160(g), which is substantively identical to NYSE Arca Options Rule 6.64P–O(g), states that during a trading halt, the Exchange will cancel all resting Market Maker quotes.

[154] *See* MEMX Rules, Chapter 20.

[155] *See* Securities Exchange Act Release No. 78474 (August 3, 2016), 81 FR 52717 (August 9, 2016) (Order Declaring Effective a Minor Rule Violation Plan) (File No. 4–701).

[156] 17 CFR 240.19d–1(c)(1).

[157] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Release No. 34–21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission will not be considered ''final'' for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[158] In its proposal to adopt the MRVP, the Exchange requested that, going forward, to the extent that there are any changes to the rules applicable to the Exchange's MRVP, the Exchange requests that the Commission deem such changes to be modifications to the Exchange's MRVP.

[159] *See, e.g.,* MEMX Rules, Chapter 25.

[160] To date, the Exchange has not taken any minor rule violation actions.

[161] 15 U.S.C. 78f(b)(1), 78f(b)(5) and 78f(b)(6).

[162] 15 U.S.C. 78f(b)(7). Rule 9.216(b) does not preclude an Options Member or person associated with an Options Member from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

[163] 17 CFR 240.19d–1(c)(2).

responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. In requesting the proposed change to the MRVP, the Exchange in no way minimizes the importance of compliance with Exchange Rules and all other rules subject to the imposition of fines under the MRVP. Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through the Exchange's disciplinary rules if the nature of the violation or prior disciplinary history warrants more significant sanctions. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations.[164] The Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires a formal disciplinary action.

Section 36 Exemption Request

The Exchange proposes to incorporate by reference as IEX Options rules certain rules of the Cboe Exchange, Inc. (''CBOE''), the New York Stock Exchange (''NYSE''), and FINRA. Specifically, proposed Rule 27.250 proposes to incorporate by reference the applicable rules of FINRA with respect to Communications with Public Customers, and proposed Rule 29.120 proposes to incorporate by reference initial and maintenance margin requirements of either CBOE or NYSE. Thus, for certain IEX Options rules, Exchange members will comply with a IEX Options rule by complying with the CBOE, NYSE, or FINRA rule referenced. Using its authority under Section 36 of the Act, the Commission has previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act when incorporating another SRO's rules by reference.[165] Each such exempt SRO has agreed to be governed by the incorporated rules, as amended from time to time, but, has not been required to file a separate proposed rule change with the Commission each time the SRO whose rules are incorporated by reference seeks to modify its rules. In addition, each SRO incorporated by reference only regulatory rules (*e.g.,* margin, suitability, arbitration), not trading rules, and incorporated by reference whole categories of rules (*i.e.,* did not ''cherry-pick'' certain individual rules within a category). Last, each exempt SRO had reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO in order to provide its members with notice of a proposed rule change that affects their interests, so that they would have an opportunity to comment on it.

In connection with this proposal, the Exchange respectfully requests, pursuant to Rule 240.0–12 under the Act,[166] an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those IEX Options rules that are effected solely by virtue of a change to a cross-referenced CBOE, NYSE, or FINRA rule. The Exchange proposes to incorporate by reference categories of rules (rather than individual rules within a category) that are not trading rules. The Exchange also agrees to provide written notice to Options Members prior to the launch of IEX Options of the specific CBOE, NYSE, and FINRA rules that it will incorporate by reference. In addition, the Exchange will notify Options Members whenever CBOE, NYSE, or FINRA proposes a change to a cross-referenced CBOE, NYSE, or FINRA rule.[167] For the foregoing reasons, the Exchange believes that its request for exemptive relief is consistent with prior requests for, and provision of, similar exemptive relief.

Amendments to Existing Exchange Rules

In addition to the rules of IEX Options proposed above, the Exchange proposes to amend certain of its existing Exchange Rules that currently apply to the Exchange's equities market in order to reflect the Exchange's proposed operation of IEX Options.

First, the Exchange proposes to amend Rule 2.160(i), which generally requires each Member to register at least two Principals with the Exchange subject to certain exceptions described therein, to provide that such paragraph (i) shall not apply to a Member that solely conducts business on the Exchange as an Options Member, however, Options Members must comply with the registration requirements set forth in proposed Rule 18.110. The Exchange notes that proposed Rule 18.110(h), which provides that every Options Member shall have at least one Options Principal and sets forth the Exchange's Options Principal registration requirements, is identical to MEMX Rule 17.2(g). In connection with this proposed change, the Exchange also proposes to amend Rule 2.160(n) to include Options Principal as a registration category and to set forth the Exchange's qualification requirements for an Options Principal, which are the same as those for an Options Principal on MEMX Options. Additionally, the Exchange proposes to amend Rule 2.160(p)(a)(4) to set forth the appropriate regulatory element continuing education module for reregistration as an Options Principal.

The Exchange also proposes to make three modifications to Rule 2.220 (IEX Services LLC as Outbound Router). First, IEX proposes to remove the word ''directly'' from the first sentence of subparagraph (a), because IEX Services will continue to route orders to away markets, but as described above, with respect to options routing, it will not route those order ''directly'' to the away markets. Second, consistent with the first change, IEX proposes to insert a new second sentence in subparagraph (a) that reads: ''When routing options orders, as set forth in Rule 22.180, IEX Services will transmit such orders to one or more routing brokers that are not affiliated with the Exchange; the routing brokers will in turn route the applicable options orders to other securities exchanges that trade options.'' IEX proposes to make this change to reflect the different nature of how IEX Services will handle routing options orders from equities orders. And third, IEX proposes to modify subparagraph (a)(8) of this rule, which states that IEX Services

[164] *See supra* note 159.

[165] *See, e.g.,* Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004). *See also* Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521, 14539–40 (March 18, 2008) (order approving SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) and 53128 (January 13, 2006), 71 FR 3550, 3565–66 (January 23, 2006) (File No. 10–131) (approving The NASDAQ Stock Market LLC's exchange application).

[166] 17 CFR 240.0–12.

[167] The Exchange will provide such notice through a posting on the same website location where the Exchange will post its own rule filings pursuant to Rule 19b–4(l) under Act, within the time frame required by that rule. The website posting will include a link to the location on the CBOE, NYSE, or FINRA websites where the proposed rule change is posted.

shall maintain an error account for the purpose of addressing positions that are the result of an execution or executions that are not clearly erroneous under Rule 11.270 and result from a technical or systems issue at IEX Services, the Exchange, a routing destination, or a non-affiliate third-party routing broker that affects one or more orders (''Error Positions''). The proposed change to Rule 2.220(a)(8) would add a reference to the comparable provision to that which governs review and resolution of clearly erroneous equities transactions (*i.e.,* Rule 11.270) but for options transactions, namely Rule 21.150, which governs review and resolution of options transactions that may qualify as obvious errors.

The Exchange also proposes to adopt Rule 21.220 (Limitation of Liability), which is almost identical to the Rule 11.260, the Limitation of Liability rule in IEX's equities trading rules. The only difference is to reflect that proposed Rule 21.220 applies to IEX Options and options trading.

Lastly, the Exchange proposes to amend Rule 9.218 (Violations Appropriate for Disposition Under Plan Pursuant to Exchange Act Rule 19d–1(c)(2)), which contains the list of Exchange Rule violations and recommended fine schedule, to include a new paragraph (k) referencing proposed Rule 26.120 for the recommended fines for minor rule violations of the Exchange Rules appliable to IEX Options, which the Exchange notes are the same as those of MEMX Options.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [168] in general, and furthers the objectives of Section 6(b)(5) of the Act [169] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the Exchange proposes to operate its options market much as it operates its equities market today and in a manner similar to that of other options exchanges, while leveraging IEX's experience and expertise in understanding the needs of market makers to offer them additional tools designed to better manage risk and drive performance. As discussed in the Purpose section, IEX believes that the proposed enhanced liquidity protection mechanisms will result in market makers providing more competitive quotes which will benefit all market participants and thereby support the protection of investors and the public interest. Also as discussed in the Purpose section, most of the proposed IEX Options rules are based on the rules of other options exchanges, primarily MEMX, C1, MIAX, NYSE Amex, and NYSE Arca. Therefore, the Exchange does not believe these aspects of the proposed rule change that are substantively identical to other exchanges' rules raise any new or novel issues that have not been previously considered by the Commission. Moreover, the Exchange believes that the proposed functionality is consistent with Section 6(b)(5) of the Act because the Trading System is designed to be efficient and its operation transparent, thereby facilitating transactions in securities, removing impediments to and perfecting the mechanisms of a free and open national market system. As described above, the Exchange's proposed rules, including the proposed Order Types and Handling Instructions, opening procedures, routing services, and order matching process are designed to provide a simplified suite of conventional features and to comply with all applicable regulatory requirements, including the obligations of the Options Order Protection and Locked/Crossed Market Plan.[170]

As discussed in the Purpose section, IEX's proposal includes a de minimis latency mechanism (or speedbump) on incoming order and quote messages designed to enable IEX to update its view of the market prior to processing orders and quotes, and a robust suite of risk protections, including the ORP, which is designed to protect market makers from excessive risk due to execution of stale quotes.

IEX believes that the proposed latency mechanism will protect investors and the public interest in several respects. First, by enabling IEX to update its view of market data prior to executing an order or quote, it thereby would support IEX's ability to accurately account for contemporaneous market data. IEX notes that this aspect of its functionality is designed to facilitate market participants executing at current (*i.e.,* not ''stale'') prices. Second, by enabling the Trading System to perform the Indicator calculation with current market data, it supports operation of the ORP (as discussed herein), which is designed to provide Market Makers with an optional tool to avoid excessive risk that can arise from execution of a stale quote. As discussed in detail above, IEX believes that this protection will encourage market makers to post aggressively priced and/or deeper quotes on the Exchange which will benefit all market participants. Thus, from a functional perspective, IEX believes that the operation of the latency mechanism is consistent with the Act.

Further, and as explained below, the proposed latency mechanism of up to a maximum of 350 microseconds is well within the geographic delays that exist among and between the data centers that IEX Options Members and other options exchanges use [171] and is consistent with the naturally occurring time indeterminism that exists in order processing.[172] And, as noted in the Purpose section, the Exchange will seek to achieve a healthy balance between the interests of liquidity providers and liquidity takers in determining the actual length of the latency, considering

[168] 15 U.S.C. 78f(b).

[169] 15 U.S.C. 78f(b)(5).

[170] *See supra* note 70.

[171] *See https://www.ice.com/publicdocs/ICE_Global_Network_Factsheet.pdf* for a description of latencies between various data centers.

[172] Accounting for the latency mechanism or speedbump is no different than accounting for other geographical distances between exchanges. *See* Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142, 41161 (June 23, 2016) (''2016 SEC Approval Order'') (approving IEX's 350 microsecond speed bump in the registration of the IEX Exchange as ''well within the range of geographic and technological latencies that market participants experience today'' such that ''latency to and from IEX will be comparable to—and even less than—delays attributable to other markets that currently are included in the NBBO,'' and finding the delay to be de minimis, *i.e.,* so short as to not frustrate the purposes of the Exchange Act by impairing fair and efficient access to IEX's quotation); *see also* Securities and Exchange Act Release No. 34–89686 (August 26, 2020) (''2020 SEC Approval Order'') at 15 (determining that IEX's de minimis speed bump when routing displayed equity orders is ''just like accounting for any other technological or geographic latency'' and doing so is consistent with applicable rules and regulations); *see also Citadel Securities LLC* v. *Securities and Exchange Commission,* 45 F.4th 27, 37 (D.C. Circuit 2022) (July 29, 2022) (ruling in favor of the SEC's approval of IEX's displayed equity order that traverses a speedbump and holding that IEX's displayed equity order's delay are ''similar to the delay that traders' communications already experience when traveling between various other exchanges across the country.'').

primarily markouts [173] and IEX fill rate [174] data.

IEX also believes that the latency mechanism is consistent with the Commission Interpretation Regarding Automated Quotations Under Regulation NMS (''de minimis delay interpretation'').[175] Although options markets do not have the same automated quotation requirements as in equities, even if they were to apply, the Commission's reasoning in the de minimis delay interpretation in the context of NMS automated quotations is instructive, as the latency mechanism IEX is proposing for the options exchange is a de minimis delay that does not impair fair and efficient access to an exchange's quotation. Specifically, the Commission stated in issuing its interpretation that intentional delays that are well within the geographic and technological latencies experienced by market participants when routing orders are de minimis to the extent they would not impair a market participant's ability to access a displayed quotation consistent with the goals of NMS Rule 611.[176] The Commission also noted that an intentional delay of any duration must be fully disclosed and codified in a written rule of the exchange, which, as described below, the latency mechanism will be fully disclosed and codified in IEX's written rules.[177]

IEX believes that its proposed latency mechanism of up to 350 microseconds is fully consistent with the reasoning in the Commission's de minimis delay interpretation.[178] First, the maximum delay is less than the existing geographic latencies experienced by market participants when routing orders. For example, latency between and among the data centers located in New Jersey range up to several hundred microseconds, with additional latency introduced by technology processing on both sides of an order or quote route between these data centers.[179] Accordingly, the proposed latency mechanism is consistent with this aspect of the Commission's de minimis interpretation.

The proposed latency mechanism also meets the additional prongs of the de minimis interpretation, that it be fully disclosed and codified in a written rule of the exchange that has become effective pursuant to Section 19 of the Act (or in a publicly-issued Trading Alert); and that the exchange articulates how the purpose, operation, and application of the delay is consistent with the Act and the rules and regulations thereunder applicable to the exchange. The latency mechanism's operation, as proposed, would be disclosed and codified in detail in IEX Rules 22.100(n) and 22.170(g). Those provisions specify that the latency mechanism shall mean a delay that is equivalent to up to 350 microseconds of latency that is added to each incoming order and quote message from a User prior to processing by the Trading System, with the specific amount of latency communicated by Trading Alert (with at least 30 days prior notice), and that will not apply to other communications between the Exchange and Users, Away Markets, data feeds, order processing and order execution on the IEX Options Book, and outbound communications to the Exchange's proprietary data feeds and OPRA. As discussed above, the purpose of the latency mechanism is to provide adequate time for the IEX Trading System to update its view of market data to enable it to accurately price orders as well as to perform the Indicator calculation with current market data.

Consequently, based on the foregoing, the Exchange believes that the latency mechanism is both de minimis and otherwise consistent with the Act.

The Exchange believes that the proposed ORP is consistent with Section 6(b) of the Act [180] in general, including furthering the objectives of Section 6(b)(5) of the Act,[181] as the proposed optional risk protection mechanism would remove impediments to and perfect the mechanism of a free and open market and a national market system and promote just and equitable principles of trade by providing an optional quote parameter, available to all IEX Options market makers, that is designed to identify when a quote is likely mispriced so that the Trading System can effectuate the advance trading instructions provided by the Market Maker to cancel or reprice its quote, as selected by the Market Maker. The ORP is an optional, narrowly tailored approach designed to provide protection from excessive risk of execution of stale quotes and thereby enable market makers to make tighter and larger quotes (*i.e.,* quotes at narrower spreads with greater size) thus enhancing the quality of IEX Options markets to the benefit of all market participants. The Exchange believes it is appropriate to provide market makers with the choice to utilize this reasonable quote protection, particularly given the continuous quoting obligations specific to market makers and their importance in providing liquidity in the listed options market. The Exchange further believes this risk functionality will encourage market makers to provide additional depth and liquidity to the Exchange's markets, thereby removing impediments to and perfecting the mechanisms of a free and open market and a national market system and, in general, protecting investors and the public interest.

The Exchange believes that the ORP supports the protection of investors and public interest goals of the Act. As described in the Purpose section, based on the structural differences between equities and listed options markets, the options exchanges often do not have the same natural liquidity of buyers and sellers for each tradeable instrument (*i.e.,* options series) as is generally the case in equities. As a result, market makers with affirmative obligations play a central role in providing liquidity to options exchanges through continuous two-sided quotes in large numbers of listed options series, thereby enabling investors to transact in listed options in accordance with their investment objectives. Because options market makers are required to maintain hundreds (and sometimes thousands) of quotes on options overlying underlying securities at any one time, a sudden

[173] Markouts measure the direction and degree to which the market moved after an execution, and are often measured as the difference between the execution price and the midpoint of the NBBO at various time intervals after a trade. Markouts are typically used as a way to measure the ''quality'' of a trade. In particular, short-term markouts of several milliseconds after the time of execution, are often used to assess whether an order was subject to ''adverse selection'' that can occur when a liquidity providing order is executed at a price that was about to become stale as a result of certain speed-based trading strategies.

[174] Fill rate data measures the degree to which incoming orders are able to execute against a resting order on a venue, and are a measure of the percent of shares of an order that are filled (or executed) by such venue, adjusting for factors such as the size of the order compared to the size of a venue's displayed quote. The maximum fill rate for an order is 100%.

[175] *See* Commission Interpretation Regarding Automated Quotations Under Regulation NMS, Exchange Act Release No. 34–78102, 81 FR 40785, 40792 (June 23, 2016).

[176] *Id.*

[177] *Id.*

[178] IEX notes that the D.C. Circuit Court also agreed with the Commission's interpretation. The Court ruled entirely in favor of the SEC's approval of IEX's system that includes applying a speedbump and quote indicator to displayed equity orders. *See Citadel Securities,* 45 F.4th at 36 (concluding the SEC's approval of a 350 microseconds intentional access delay for displayed orders to be ''de minimis—*i.e.,* a delay so short as to not frustrate the purposes of Rule 611 by impairing fair and efficient access to an exchange's quotations''); *see also id.* (''The SEC's conclusion that mere de minimis delays do not cause an order to violate Regulation NMS's immediacy requirement was therefore reasonable.'')

[179] *See https://www.ice.com/publicdocs/ICE_Global_Network_Factsheet.pdf.*

[180] 15 U.S.C. 78f(b).

[181] 15 U.S.C. 78f(b)(5).

market move in the underlying security can leave them vulnerable to being executed on quotes that are stale and dislocated from the price of the underlying security.[182] Liquidity takers can target these stale quotes, with limited risk should they fail, before the market maker has time to move its quotes to reflect the price change in the underlying security exposing them to potentially major losses.

The ORP is designed to supplement the standard proposed risk checks to provide augmented protection to address the inherent risks faced by market makers. IEX believes that the operation of the ORP is similar to activity-based and price reasonability risk checks offered by other options exchanges (and proposed by IEX herein), in terms of its objective and impact on a resting quote.[183] Each of these risk controls will cancel an order when the control is triggered based on a determination that the price of the market maker's quote is ''unreasonable'' because it is no longer reflective of the price of the underlying security and therefore likely stale (price reasonability check) or that the execution activity of a market maker's quotes exceeds the market maker's risk tolerance (activity-based controls). Additionally, the trading collar and limit order protection rules of other options exchanges and those similarly proposed by IEX provide for orders to be repriced.

However, IEX notes that the proposed ORP would be more transparent than the activity-based controls in determining when a market maker quote is potentially subject to cancelation (or adjustment) because it is based on a transparent formula specified in IEX's rules and related Trading Alerts. In contrast, those triggers for an activity-based control are nonpublic and set by each exchange member.

As discussed above, because of the lack of natural sources of liquidity across the multitude of listed options series, market makers are subject to affirmative obligations to maintain continuous two-sided quotes on hundreds or thousands of individual options series. While IEX proposes to offer bulk quoting and purge port functionality to market makers (in the same manner as other options exchanges), in a fast-moving market, their quotes can nonetheless become stale almost instantaneously. In those times, a sophisticated liquidity taker can target one or more stale market maker quotes before the market maker can update its quotes, thereby exposing the market maker to potentially major losses. The ORP is designed to assist market makers with an option to manage this risk, similar to the other risk controls. While some overlap is expected, IEX believes that the Indicator would potentially identify additional instances of stale quotes beyond those identified by the other price reasonability checks.

Further, IEX notes that the operation of the Options Quote Indicator is similar to the manner in which IEX's equities market (the ''Equities System'') utilizes a ''crumbling quote indicator'' to encourage the provision of displayed liquidity by providing reasonably tailored protections against adverse executions.[184] As with the crumbling quote indicator, the Indicator will be a transparent formula based on a pre-determined objective set of circumstances that will be specified in IEX's rules to identify when the Protected Bid and/or Protected Offer in a particular options series is likely to move to a less aggressive price.

Moreover, the Options Trading System will use the ORP in a manner similar to the way in which the Equities System applies the crumbling quote indicator to resting displayed liquidity, which reprices the applicable order or quote. The functional differences between the crumbling quote indicator and the Indicator reflect that options pricing is derivative.[185] Thus, the Indicator will trigger when it identifies that a Protected Bid or Protected Offer is likely to move to a less aggressive price, based on a price change in the underlying security, thereby exposing the market maker to excessive risk, but, unlike the crumbling quote indicator, would reprice or cancel the impacted quote and not remain ''on'' for a period of time after triggering. IEX believes that this approach is appropriate in view of the derivative pricing of options and that it will contribute to more displayed liquidity through improved execution quality, enhance the public price discovery process, and promote just and equitable principles of trade.[186]

Further, the ORP would be available, as a quote parameter, only to market makers and on an optional basis, because the Exchange believes that it is most appropriate as a tool to address market maker risk. IEX believes that this approach is appropriate because market

[182] *See, e.g.,* Lehoczky, Sandor and Woods, Ellen and Russell, Matthew and Nguyen, Mina and Somers, James, Dead Man's Switch: Making Options Markets Safer with Active Quote Protection (May 2020) at 2–3, 6, available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3675849* (discussing the need for quote protection for market makers to allow for a deep and liquid listed options market and explaining that ''race conditions'' negatively impact pricing efficiency, ''as market makers have been shown to quote wider spreads or step back instead of continually updating with price moves for fear of being ''picked off.''); *see also* Citadel Securities, Market Lens, July 2020, available at *https://www.citadel.com/securities/wp-content/uploads/sites/2/2020/07/Market-Lens-Order-Cancellation-White-Paper_FINAL.pdf* (explaining the need for risk management in electronic trading given that ''traders who place limit orders—the foundation of public price discovery—are exposed to the risk that their quotations will be executed at an inopportune time, leading to potential losses'' and that the ''greater the risk of an inopportune execution, the more compensation is required, which leads to wider bid-ask spreads. Conversely, anything the trader can do to lower the risk of an inopportune execution will lower the compensation required, which leads to narrower bid-ask spreads.'').

[183] *See, e.g.,* Market-Maker Protections, Market Structure, Optiver, July 17, 2023, available at *https://optiver.com/insights/market-maker-protections/* (explaining that exchanges implement robust market-maker protections to ''assist market makers in coping with the risks of posting continuous, two-sided quotes in thousands of financial instruments'' and to provide the ability to automatically pull or amend their quotes so that ''all quotes falling within the scope of protection still resting on the book are prohibited from further execution'').

[184] In 2016, IEX received SEC approval of the IEX's exchange system that provides a similar quote indicator for equities. *See* Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142, 41161 (June 23, 2016) (''2016 SEC Approval Order'') (approving IEX's exchange system in its registration as a national securities exchange, which included the approval of IEX's crumbling quote indicator that assesses quote instability by utilizing a real-time, based on pre-determined, objective set of conditions that protects orders from unfavorable executions when the market is moving against them). In 2020, IEX received SEC approval to apply the quote indicator to displayed orders in equities. *See* 2020 SEC Approval Order, supra note 172, at 6–7 (receiving unanimous support and concluding that the Exchange's displayed order proposal that included a similar quote indicator is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange and that is designed to improve market quality, enhance price discovery, and promote just and equitable principles of trade).

[185] Because of this difference, the Indicator is designed to identify when the Protected Bid and/or Protected Offer in an option is dislocated from the price of the underlying based on a price change in the underlying and therefore likely to be in transition to a less aggressive price, while the Crumbling Quote Indicator utilizes changes in the protected quote in the security itself to make such a prediction.

[186] *See, e.g.,* 2020 SEC Approval Order, supra note 172, at 19 (concluding that IEX's exchange functionality protects against adverse selection and incentivizes more displayed liquidity through improved execution quality for liquidity providers, which contributes ''to fair and orderly markets'' and supports ''the public price discovery process''); at 26 (finding that the Exchange's speedbump and crumbling quote indicator promotes the interest of long term investors and inures to the ''benefit of displayed markets, leading to increased displayed liquidity from which all market participants ultimately will benefit''); at 52 (concluding that the Exchange's order protection functionality ''is designed to encourage market participants to post more priced limit orders, including displayed orders, on IEX, and thereby promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market, and, in general, protects investors and the public interest.'').

makers are subject to affirmative obligations to provide continuous two-sided quotes and cannot back away or unduly widen their quotes during periods of price volatility, as can other liquidity providers.[187] By offering market makers this narrowly-tailored, optional tool, IEX believes it will attract additional displayed liquidity that will be available to all market participants.

IEX also believes that use of the Indicator in determining when to trigger the ORP is consistent with the protection of investors and the public interest because the Indicator is based on the well-recognized Black-Scholes options pricing model, which IEX believes is an appropriate methodology to identify when a market maker's quote in an option is dislocated from the price of the underlying security based on the mathematical relationship between the price of the underlying security and the overlying options. Moreover, IEX believes that the access delay [188] (as discussed above) will serve to enhance the accuracy of the Indicator by providing adequate time for the IEX Trading System to update its Indicator calculation with current market data. In this regard, as discussed earlier, IEX notes that the proposed access delay of up to a maximum of 350 microseconds is well within the geographic delays that exist among and between the data centers that IEX Options Members, and other options exchanges, use and is consistent with the naturally occurring time indeterminism that exists in order processing.

Further, IEX believes that limiting the availability of the ORP to resting market maker quotes is consistent with the Act for several reasons. As discussed in depth above, market makers are integral to providing liquidity on options exchanges, and at the same time subject to a potentially excessive level of risk from execution of one or more stale quotes. Additionally, Market Makers' obligations apply across all series in their appointed class. Other liquidity providers are free to concentrate their efforts in a select number of series. Thus, Market Makers have greater exposure to latency arbitrage, take on greater risk, and incur more related capital charges than other liquidity providers. IEX determined to apply the functionality to resting quotes only as this approach will best achieve the purpose of protecting market markets from the excessive risk of executions at stale prices without disrupting market makers' ability to update their quotations.

Moreover, IEX notes that the Commission has previously recognized the utility of IEX providing protection to liquidity providers through order types that leverage its crumbling quote indicator to appropriately protect market participants from the risks of transacting when the market is in transition and thereby incentivize the entry of liquidity providing orders. The Exchange believes that the proposed ORP is consistent with this history and is in furtherance of driving tighter and deeper displayed markets to the benefit of investors.[189]

IEX also believes that the proposal is consistent with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS.[190] Specifically, any marketable interest that is executable against a market maker's quote that has been received by the Trading System prior to the time that a quote instability determination is received by Trading System will be automatically executed, subject to processing of any prior messages, at the price and up to the size of the market maker's quote.

IEX believes that the proposed ORP is consistent with the protection of investors and the public interest, and is consistent with the Exchange Act, including furthering the objectives of Section 6(b)(5) of the Act,[191] because it is a narrowly-tailored approach designed to appropriately balance the risks faced by market makers with the legitimate objectives of liquidity takers by providing additional optional risk protection to market makers and thereby encourage aggressive quoting. The Exchange further believes that offering more risk management protections to Market Makers would mitigate their exposure to excessive risk. As discussed in detail above, Market Makers are required to continuously provide two-sided quotes in substantial numbers of listed options series that can create large, unintended positions exposing market makers to excessive risk. Market Maker quotes are critical to provide liquidity to the market and contribute to price discovery for investors. Without robust liquidity protection, market makers may be forced to widen their spreads, show less liquidity or simply exit the market, which can result in deterioration of market quality and adversely impact investors' and other liquidity takers' ability to transact in the options markets. In sum, liquidity protection for options market makers is vital for achieving a healthy balance between liquidity providers and liquidity takers in the options market that will promote more displayed liquidity from which all market participants ultimately will benefit.

The Exchange believes that the proposed rules of IEX Options, as well as the proposed method of monitoring for compliance with and enforcing such rules is also consistent with the Act, particularly Sections 6(b)(1), 6(b)(5) and 6(b)(6) of the Act, which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange. The Exchange has proposed to adopt rules necessary to regulate Options Members that are nearly identical to the approved rules of other options exchanges, as described above. The Exchange proposes to regulate activity on IEX Options in the same way it regulates activity on its equities market (and comparable to other options exchanges), through various Exchange specific functions, an RSA with FINRA, as well as participation in industry plans, including plans pursuant to Rule 17d–2 under the Exchange Act.

In conclusion, for the reasons discussed above, IEX believes that the proposed rule change is consistent with the investor protection and public interest purposes of Section 6 of the Act. Additionally, IEX believes that establishing a new options market that participates in all the current (and any future) national market system plans governing options trading is consistent with Section 11A of the Act relating to the establishment of the national market system for securities.[192] As proposed, IEX Options will offer a simple alternative to existing options exchanges that is designed to support competitive quoting to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed rule change is designed to enhance competition by

[187] *See, e.g.,* Protecting Liquidity in Options Markets, Market Structure, Optiver, July 12, 2023, available at *https://optiver.com/insights/protecting-liquidity-in-options-markets/* (explaining that without robust liquidity protection mechanisms for market makers to protect against the risks of displaying stale or outdated quotes, ''market makers may be forced to widen their spreads, show less liquidity or simply exit the market'' and overall ''market quality can deteriorate'' with the result of investors suffering).

[188] *See* proposed IEX Rule 22.170(g).

[189] *See supra* notes 184 and 186 and accompanying text.

[190] *See* proposed IEX Rule 23.140(d).

[191] 15 U.S.C. 78f(b)(5).

[192] 15 U.S.C. 78k–1.

providing for an additional exchange market for the trading of listed options.

IEX believes that this proposal will enhance competition by allowing the Exchange to leverage its existing robust technology platform to provide a resilient, deterministic, and transparent execution platform for options. The proposed rule change will insert an additional competitive dynamic to the options landscape by allowing the Exchange to compete with existing options exchanges and will promote further initiative and innovation among market centers and market participants.

Further, the Exchange does not believe that the latency mechanism or optional Market Maker quote parameter aspect of the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, these features are designed to enhance IEX Option's competitiveness by incentivizing the entry of increased Market Maker liquidity.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition because it will apply to all Options Members in the same manner and any Options Member can perform any specified function subject to meeting applicable requirements.

The Exchange also does not believe that the proposed latency mechanism will impose any burden on intra-market competition that is not necessary or appropriate because it will apply in the same manner to all incoming orders and quotes. Further, as noted in the Purpose section, the Exchange will determine the length of the latency mechanism with a view towards achieving a healthy balance between liquidity providers and liquidity takers.

The Exchange also does not believe that the proposed ORP will impose any burden on intra-market competition that is not necessary or appropriate because it will be available in the same manner to all Market Makers and any Options Member could become a Market Maker, subject to meeting applicable requirements. The ORP is designed to mitigate Market Makers' exposure to excessive risk and thereby enable them to provide more competitive quotes to the benefit of all market participants. The Exchange also believes that limiting the ORP functionality to Market Makers will not impose any burden on intra-market competition that is not necessary and appropriate because Market Makers are subject to robust affirmative quoting obligations and thus can uniquely benefit from the protections to be provided by the ORP. The Exchange thus believes it is reasonable to provide Market Makers with an additional tool to manage their risk parameters, particularly given their unique and critical role in the listed options market and the obligations that Market Makers must satisfy. As discussed in the Purpose and Statutory Basis sections, the proposed ORP will protect resting market-maker quotes (which are subject to quoting obligations) from executions at potentially stale prices, which the Exchange believes will reduce their risk and encourage Market Makers to provide more competitive markets on the Exchange, thereby benefitting all market participants through additional execution opportunities at prices that reflect the then-current market conditions. The Exchange expects the proposed rule change to increase liquidity and enhance competition in the market because Market Makers may be able to quote more aggressively with added productions from exposure to execution risk, thereby 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 also does not believe that the proposal will impose any burden on inter-market competition that is not necessary or appropriate. Competing exchanges are free to adopt similar functionality, subject to the Commission rule filing process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–IEX–2025–02 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–IEX–2025–02. 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–IEX–2025–02 and should be submitted on or before February 11, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[193]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–01290 Filed 1–17–25; 8:45 am]

BILLING CODE 8011–01–P

[193] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102191; File No. SR–LCH SA–2025–001]

Self-Regulatory Organizations; LCH SA; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the CDSClear Fee Grid for 2025

January 14, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2025, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (''Proposed Rule Change'') described in Item I below, which Item has been substantially prepared by LCH SA. LCH SA has designated this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f) thereunder.[4] The Commission is publishing this notice to solicit comments on the Proposed Rule Change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

LCH SA is proposing to amend its CDSClear fee grid for 2025 (the ''Fee Grid'') by incorporating changes in the CDSClear business and clearing services offered (the ''Proposed Rule Change''). The text of the Proposed Rule Change has been annexed [sic] as Exhibit 5 [sic] to File No. SR–LCH SA–2025–001.[5]

The implementation of the Proposed Rule Change will be contingent on LCH SA's receipt of all necessary regulatory approvals.

The proposed rule change, including LCH SA's statement of the purpose of, and statutory basis for, the proposed rule change, is available on LCH SA's website at *https://www.lseg.com/en/post-trade/clearing/clearing-resources/rulebooks/proposed-rule-changes#t-sa* and on the Commission's website at *https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/lchsa?file number=LCH SA–2025–001*.

II. 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.[6] Comments may be submitted electronically by using the Commission's internet comment form (*https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/lchsa?filenumber=LCHSA-2025-001*) or by sending an email to *rule-comments@sec.gov.* Please include file number SR–LCH SA–2025–001 on the subject line. Alternatively, paper comments may be sent to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to File Number SR–LCH SA–2025–001. 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-regulations/self-regulatory-organization-rulemaking/lchsa?filenumber=LCHSA-2025-001*).

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–LCH SA–2025–001 and should be submitted on or before February 11, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–01297 Filed 1–17–25; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f). At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[5] All capitalized terms not defined herein have the same definition as in the CDS Clearing Rule Book available at *https://www.lseg.com/content/dam/post-trade/en_us/documents/lch/rulebooks/lch-sa/lch-sa-cdsclear-rule-book.pdf.*

[6] 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 LCH SA and on LCH SA's website at: *https://www.lseg.com/en/post-trade/clearing/clearing-resources/rulebooks/proposed-rule-changes#t-sa.*

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20958 and #20959; SOUTH CAROLINA Disaster Number SC–20017]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of South Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Carolina (FEMA—4858–DR), dated January 10, 2025.

Incident: Severe Storms and Flooding.

DATES: Issued on January 10, 2025.

Incident Period: November 6, 2024 through November 14, 2024.

Physical Loan Application Deadline Date: March 11, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: October 10, 2025.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on January 10, 2025, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bamberg, Calhoun, Orangeburg.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.625
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 209586 and for economic injury is 209590.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2025–01343 Filed 1–17–25; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20956 and #20957; ALASKA Disaster Number AK–20011]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Native Village of Kwigillingok

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Native Village of Kwigillingok (FEMA–4857–DR), dated January 10, 2025.

Incident: Severe Storm and Flooding.

DATES: Issued on January 10, 2025.

Incident Period: August 15, 2024 through August 18, 2024.

Physical Loan Application Deadline Date: March 11, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: October 10, 2025.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on January 10, 2025, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary area: Native Village of Kwigillingok.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 209566 and for economic injury is 209570.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2025–01345 Filed 1–17–25; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12635]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Hilma af Klint: What Stands Behind the Flowers'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Hilma af Klint: What Stands Behind the Flowers'' at The Museum of Modern Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2025–01301 Filed 1–17–25; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12636]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Van Gogh: The Roulin Family Portraits'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Van Gogh: The Roulin Family Portraits'' at the Museum of Fine Arts, Boston, in Boston, Massachusetts, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2025–01309 Filed 1–17–25; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: December 1–31, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22 (e) and (f) for the time period specified above.

Approvals By Rule—Issued Under 18 CFR 806.22(e)

1. TE Connectivity Corporation; Pad ID: Lickdale Facility; ABR–202412004; Union Township, Lebanon County, Pa.; Consumptive Use of Up to 0.0800 mgd; Approval Date: December 30, 2024.

2. LSC Communications US, LLC; Pad ID: Lancaster East Plant; ABR–202412005; City Of Lancaster, Lancaster County, Pa.; Consumptive Use of Up to 0.1500 mgd; Approval Date: December 30, 2024.

Approvals By Rule—Issued Under 18 CFR 806.22(f)

1. EQT ARO LLC; Pad ID: COP Tract 027B Pad B; ABR–202412001; McHenry Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 4, 2024.

2. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Bacorn; ABR–201408003.R2; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: December 4, 2024.

3. RENEWAL—Coterra Energy Inc.; Pad ID: Elk Lake School District P1; ABR–201908006.R1; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 4, 2024.

4. RENEWAL—PPG Operations LLC; Pad ID: Whitetail Gun & Rod Club #1; ABR–20090418.R3; Goshen Township, Clearfield County, Pa.; Consumptive Use of Up to 0.9000 mgd; Approval Date: December 4, 2024.

5. Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: December 4, 2024.

6. Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 4, 2024.

7. RENEWAL—Coterra Energy Inc.; Pad ID: Teel P5; ABR–20090542.R3; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 13, 2024.

8. ABR–20090606.R3; Mifflin Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 13, 2024.

9. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: KLEIN (01 014) R; ABR–20090810.R3; Armenia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: December 13, 2024.

10. RENEWAL—Seneca Resources Company, LLC; Pad ID: B09–I; ABR–201912001.R1; Shippen Township, Cameron County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 13, 2024.

11. RENEWAL—EXCO Resources (PA), LLC; Pad ID: Barto Unit #1H, #2H; ABR–20090514.R3; Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: December 23, 2024.

12. RENEWAL—EXCO Resources (PA), LLC; Pad ID: Litke (14H, 15H, 16H); ABR–20090431.R3; Burnside Township, Centre County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 23, 2024.

13. RENEWAL—EXCO Resources (PA), LLC; Pad ID: Litke (7H & 8H); ABR–20090426.R3; Burnside Township, Centre County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 23, 2024.

14. RENEWAL—EXCO Resources (PA), LLC; Pad ID: Litke 1H, 2H; ABR–20090425.R3; Burnside Township, Centre County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 23, 2024.

15. RENEWAL—EXCO Resources (PA), LLC; Pad ID: Zinck Unit # 1 Pad; ABR–201908014.R1; Watson Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 23, 2024.

16. RENEWAL—Range Resources—Appalachia, LLC; Pad ID: Roup 1H—2H; ABR–201407018.R2; Mifflin Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 23, 2024.

17. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: CSI; ABR–20091112.R3; Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: December 24, 2024.

18. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Doss; ABR–20091109.R3; Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: December 24, 2024.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: January 14, 2025.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2025–01262 Filed 1–17–25; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: December 1–31, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone:

(717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.gov.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects, described below, pursuant to 18 CFR part 806, subpart E, for the time period specified above:

1. Pennsylvania Fish & Boat Commission—Cooperative Hatcheries and Nurseries, GF Certificate No. GF–202412282, various municipalities and counties, Pa.; see Addendum; Reissue Date: December 12, 2024.

2. New Enterprise Stone & Lime Co., Inc.—Roaring Spring Quarry, GF Certificate No. GF–202412283, Taylor Township, Blair County, Pa.; Quarry Sump, Halter Creek 1, Well 1, Well 2, and Well 3 (M4); Reissue Date: December 12, 2024.

3. Dover Township—Public Water Supply System, GF Certificate No. GF–202412284, Dover Township, York County, Pa.; Wells 2, 3, 4, 5, and 6; Reissue Date: December 26, 2024.

4. Tallman Family Farms, L.L.C., GF Certificate No. GF–202412285, Porter Township, Schuylkill County, Pa.; Wiconisco Creek #2, Bohr Pond, and Wiconisco Creek GET ZIM; Reissue Date: December 26, 2024.

5. Heidelberg Materials Northeast LLC—Oak Hall Quarry, GF Certificate No. GF–202412286, College Township, Centre County, Pa.; Well 1; Issue Date: December 27, 2024.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: January 14, 2025.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2025–01253 Filed 1–17–25; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2024–2630; Summary Notice No. 2025–04]

Petition for Exemption; Summary of Petition Received; Merlin Labs, Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 10, 2025.

ADDRESSES: Send comments identified by docket number FAA–2024–2630 using any of the following methods:

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

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nondie Hemphill at (202) 267–6930, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Dan Ngo,

Manager, Part 11 Petitions Branch, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2024–2630.

Petitioner: Merlin Labs, Inc.

Section(s) of 14 CFR Affected: §§ 91.9(a) and 91.319(c).

Description of Relief Sought: Petitioner is requesting an exemption from 14 CFR 91.9(a) and 91.319(c) to allow for the operation of two modified Cessna 208B Caravans, which have been issued Special Airworthiness Certificates in the Experimental Category, over densely populated areas outside of congested airways for the purposes of research and development. The petitioner is developing an advanced autopilot system which requires flight testing while conducting published instrument approaches in-and-out of Laurence G. Hanscom Field Airport (KBED). Flights over densely populated areas would be restricted to operations which are necessary to conduct published instrument approaches in-and-out of KBED. At no point will the aircraft be operated as an unmanned system, or an optionally piloted system.

[FR Doc. 2025–01276 Filed 1–17–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0278]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from nine individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before February 20, 2025.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No.

FMCSA–2024–0278 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2024–0278) in the keyword box and click ''Search.'' Next, choose the only notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- Mail: Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- Fax: (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2024–0278), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2024-0278.* Next, sort the results by ''Posted (Newer-Older),'' choose the only notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2024–0278) in the keyword box and click ''Search.'' Next, choose the only notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. 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 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The nine individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Application for Exemptions; National Association of the Deaf,'' (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Kashif Ali

Kashif Ali, 40, holds a class D driver's license in Illinois.

Kesha Blue

Kesha Blue, 52, holds a class D driver's license in New York.

Daniel Clarke

Daniel Clarke, 38, holds a class D driver's license in Utah.

Kenneth Cobbs

Kenneth Cobbs, 38, holds a class A commercial driver's license (CDL) in California.

Carl Danberg

Carl Danberg, 53, holds a class A CDL in Utah.

Matthew Emmons

Matthew Emmons, 39, holds a class D driver's license in New Jersey.

Dale Ivins

Dale Ivins, 54, holds a class R driver's license in Colorado.

Andrew Lieb

Andrew Lieb, 22, holds a class D driver's license in Ohio.

Braden Williford

Braden Williford, 31, holds a class D driver's license in Utah.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2025–01311 Filed 1–17–25; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket FTA–2025–0001]

Notice of Establishment of Emergency Relief Docket for Calendar Year 2025

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: By this notice, the Federal Transit Administration (FTA) is establishing an Emergency Relief Docket for calendar year 2025, so grantees and subgrantees affected by a national or regional emergency or disaster may request temporary relief from FTA administrative and statutory requirements.

FOR FURTHER INFORMATION CONTACT: Diane Alexander, Attorney-Advisor, Office of Chief Counsel, Federal Transit Administration, phone: (202) 366–3101, or email, *diane.alexander@dot.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 49 CFR 601.42, FTA is establishing the Emergency Relief Docket for calendar year 2025. In the case of a national or regional emergency or disaster, or in anticipation of such an event, when FTA requirements impede a grantee or subgrantee's ability to respond to the emergency or disaster, a grantee or subgrantee may submit a request for relief from specific FTA requirements.

If FTA determines that a national or regional emergency or disaster has occurred, or in anticipation of such an event, FTA will place a message on its web page (*https://www.transit.dot.gov*) indicating the Emergency Relief Docket has been opened and including the docket number.

All petitions for relief from FTA administrative or statutory requirements must be posted in the docket in order to receive consideration by FTA. The docket is publicly available and can be accessed 24 hours a day, seven days a week, via the internet at *https://www.regulations.gov/.* Any grantee or subgrantee submitting petitions for relief or comments to the docket must include the agency name (Federal Transit Administration) and docket number FTA–2025–0001.

Interested parties may consult 49 CFR part 601, subpart D for information on FTA's emergency procedures for public transportation systems. FTA strongly encourages grantees and subgrantees to contact their FTA regional office and notify FTA of the intent to submit a petition to the docket.

A grantee or subgrantee seeking relief has three avenues for submitting a petition. First, a grantee or subgrantee may submit a petition for waiver of FTA requirements to *https://www.regulations.gov/,* for posting in the docket (FTA–2025–0001). Alternatively, a grantee or subgrantee may submit a petition in duplicate (two copies) to the FTA Administrator, via U.S. mail or hand delivery to Federal Transit Administration, 1200 New Jersey Ave. SE, Washington, DC 20590; via fax to (202) 366–3472; or via email to *diane.alexander@dot.gov;* or via U.S. mail or hand delivery to the DOT Docket Management Facility, 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590. Thirdly, in the event that a grantee or subgrantee needs to request immediate relief and does not have access to electronic means to request that relief, the grantee or subgrantee may contact any FTA regional office or FTA headquarters and request that FTA staff submit the petition on its behalf.

Federal public transportation law at 49 U.S.C. 5324(d) provides that a grant awarded under section 5324, or under 49 U.S.C. 5307 or 49 U.S.C. 5311, that is made to address an emergency shall be subject to the terms and conditions the Secretary determines are necessary. This language allows FTA to waive certain statutory, as well as administrative, requirements. An FTA grantee or subgrantee receiving financial assistance under 49 U.S.C. 5324, 5307, or 5311 that is affected by a national or regional emergency or disaster may request a waiver of provisions of chapter 53 of title 49 of the United States Code in connection with such financial assistance, when a grantee or subgrantee demonstrates that the requirement(s) will limit a grantee's or subgrantee's ability to respond to a national or regional emergency or disaster.

Pursuant to 49 CFR 601.42, a grantee or subgrantee must include certain information when requesting a waiver of statutory or administrative requirements. A petition for relief shall:

(a) Include the agency name (Federal Transit Administration) and docket number FTA–2025–0001;

(b) Identify the grantee or subgrantee and its geographic location,

(c) Identify the section of chapter 53 of title 49 of the United States Code, or the portion of an FTA policy statement, circular, guidance document or rule, from which the grantee or subgrantee seeks relief;

(d) Specifically address how a requirement in chapter 53 of title 49 of the United States Code, or an FTA requirement in a policy statement, circular, agency guidance or rule, will limit a grantee's or subgrantee's ability to respond to a national or regional emergency or disaster; and

(e) Specify if the petition for relief is one-time or ongoing, and if ongoing identify the time period for which the relief is requested. The time period may not exceed three months; however, additional time may be requested through a second petition for relief.

Pursuant to 49 CFR 601.46, a petition for relief from administrative requirements will be conditionally granted for a period of three (3) business days from the date it is submitted to the Emergency Relief Docket. FTA will review the petition after the expiration of the three business days and review any comments submitted regarding the petition. FTA may contact the grantee or subgrantee that submitted the request for relief, or any party that submits comments to the docket, to obtain more information prior to making a decision. FTA shall then post a decision to the Emergency Relief Docket. FTA's decision will be based on whether the petition meets the criteria for use of these emergency procedures, the substance of the request, and any comments submitted regarding the petition. If FTA does not respond to the request for relief to the docket within three business days, the grantee or subgrantee may assume its petition is granted for a period not to exceed three months until and unless FTA states otherwise.

A petition for relief from statutory requirements will not be conditionally granted and requires a written decision from the FTA Administrator. Further, grantees seeking a waiver from Buy America requirements must follow the procedures in 49 CFR 661.7 and 661.9.

Buy America waivers will not be granted through the Emergency Relief Docket.

An FTA decision, either granting or denying a petition, shall be posted in the Emergency Relief Docket and shall reference the document number of the petition to which it relates. FTA reserves the right to reconsider any decision made pursuant to these emergency procedures based upon its own initiative, based upon information or comments received subsequent to the three business day comment period, or at the request of a grantee or subgrantee upon denial of a request for relief. FTA shall notify the grantee or subgrantee if FTA plans to reconsider a decision.

Pursuant to FTA's Charter Rule at 49 CFR 604.2(f), grantees and subgrantees may assist with evacuations or other movement of people that might otherwise be considered charter transportation when that transportation is in response to an emergency declared by the President, governor or mayor, or in an emergency requiring immediate action prior to a formal declaration, even if a formal declaration of an emergency is not eventually made by the President, governor or mayor. Therefore, a request for relief is not necessary in order to provide this service. However, if the emergency lasts more than 45 calendar days and the grantee will continue to provide service that would otherwise be considered charter service, the grantee or subgrantee shall follow the procedures set out in this notice.

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. Grantees and subgrantees should refer to FTA's regulations, including 49 CFR part 601, for requirements for submitting a request for emergency relief.

Veronica Vanterpool,

Deputy Administrator.

[FR Doc. 2025–01251 Filed 1–17–25; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2025–0002]

Legacy Limousines and Luxury Coaches; Grant of Petition for Temporary Exemption From Shoulder Belt Requirement for Side-Facing Seats on Motorcoaches

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

ACTION: Notice of grant of a petition for temporary exemption.

SUMMARY: In accordance with our regulations, NHTSA is granting a petition from Legacy Limousines and Luxury Coaches for a temporary exemption from the requirement to install Type 2 seat belts (*i.e.,* shoulder belts) at side-facing locations in the company's motorcoaches. The petitioner is a final-stage manufacturer of entertainer-type motorcoaches, seeking temporary exemption from the shoulder belt requirement of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection,'' for side-facing seats on motorcoaches. The granted exemption permits the petitioner to install Type 1 seat belts (lap belt only) at side-facing seating positions, instead of the Type 2 seat belts (lap and shoulder belts) required by FMVSS No. 208. After reviewing the petition and the comments received, the agency has determined that the requested exemption is warranted to enable the petitioner to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle.

DATES: This exemption applies to the petitioner's motorcoaches produced from January 21, 2025 until January 21, 2027.

FOR FURTHER INFORMATION CONTACT: Sara R. Bennett, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background
II. Authority and Procedures for Temporary Exemption
III. FMVSS No. 208
IV. Legacy Limousine and Luxury Coaches' Petition
V. Public Participation

I. Background

This notice grants a petition submitted by Legacy Limousines and Luxury Coaches from the shoulder belt requirement of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection,'' for side-facing seats on motorcoaches.

As background, NHTSA is responsible for promulgating and enforcing Federal motor vehicle safety standards (FMVSS) designed to improve motor vehicle safety. Generally, a manufacturer may not manufacture for sale, sell, offer for sale, or introduce or deliver for introduction into interstate commerce a vehicle that does not comply with all applicable FMVSS.[1] There are limited exceptions to this general prohibition.[2] One path permits manufacturers to petition NHTSA for an exemption for noncompliant vehicles under a specified set of statutory bases.[3] The details of these bases, and under which basis Legacy Limousines and Luxury Coaches' petition is granted, are provided in the sections of this notice that follow.

II. Authority and Procedures for Temporary Exemption

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified at 49 U.S.C. chapter 301, authorizes the Secretary of Transportation to exempt motor vehicles, on a temporary basis and under specified circumstances, and on terms the Secretary considers appropriate, from a FMVSS or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.[4]

The Safety Act authorizes the Secretary to grant, in whole or in part, a temporary exemption to a vehicle manufacturer if the Secretary makes one of four specified findings.[5] The Secretary must also look comprehensively at the request for exemption and find that the exemption is consistent with the public interest and with the objectives of the Safety Act.[6]

The Secretary must evaluate the petition for exemption under at least one of the following bases:

(ii) Compliance would cause substantial economic hardship, and the manufacturer tried to comply in good faith;

(ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature, and

[1] 49 U.S.C. 30112(a)(1).

[2] 49 U.S.C. 30112(b); 49 U.S.C. 30113; 49 U.S.C. 30114.

[3] 49 U.S.C. 30113.

[4] 49 CFR 1.95.

[5] 49 U.S.C. 30113(b)(3).

[6] 49 U.S.C. 30113(b)(3)(A).

the safety level is equal to the safety level of the standard;

(iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier, and the safety level of the vehicle is not unreasonably lowered; or

(iv) compliance would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.[7]

NHTSA established 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. The requirements in 49 CFR 555.5 state that the petitioner must set forth the basis of the petition by providing the information required under 49 CFR 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of the Safety Act. A petition submitted on the basis that the applicant is otherwise unable to sell (or in this instance, manufacture) a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempt vehicle must include the information specified in 49 CFR 555.6(d).

III. FMVSS No. 208

On November 25, 2013, NHTSA published a final rule amending FMVSS No. 208 to require seat belts for each passenger seating position in all new over-the-road buses (OTRBs) (regardless of gross vehicle weight rating (GVWR)), and all other buses with GVWRs greater than 11,793 kilograms (kg) (26,000 pounds (lb)) (with certain exclusions).

In the notice of proposed rulemaking (NPRM) preceding the final rule, NHTSA proposed to permit manufacturers the option of installing either a Type 1 (lap belt) or a Type 2 (lap and shoulder belt) on side-facing seats.[8] The proposed option was consistent with a provision in FMVSS No. 208 that allows lap belts for side-facing seats on buses with a GVWR of 4,536 kg (10,000 lb) or less. NHTSA proposed the option because the agency was unaware of any demonstrable increase in associated risk of lap belts compared to lap and shoulder belts on side-facing seats. NHTSA stated that ''a study commissioned by the European Commission regarding side-facing seats on minibuses and motorcoaches found that due to different seat belt designs, crash modes and a lack of real-world data, it cannot be determined whether a lap belt or a lap/shoulder belt would be the most effective.'' [9]

However, after the NPRM was published, the Motorcoach Enhanced Safety Act of 2012 was enacted as part of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141 (July 6, 2012). Section 32703(a) of MAP–21 directed the Secretary of Transportation (authority delegated to NHTSA) to ''prescribe regulations requiring safety belts to be installed in motorcoaches at each designated seating position.'' As MAP–21 defined ''safety belt'' to mean an integrated lap and shoulder belt, the final rule amended FMVSS No. 208 to require lap and shoulder belts at all designated seating positions, including side-facing seats, on OTRBs.

Even so, the agency reiterated its view that ''the addition of a shoulder belt at [side-facing seats on light vehicles] is of limited value, given the paucity of data related to side facing seats.'' [10] The agency also noted that Australian Design Rule ADR 5/04, ''Anchorages for Seatbelts'' specifically prohibits shoulder belts for side-facing seats.

Given that background, and believing that few OTRBs would have side-facing seats, NHTSA stated in the November 2013 final rule that the manufacturers at issue may petition NHTSA for a temporary exemption under 49 CFR part 555 to install lap belts instead of lap and shoulder belts at side-facing seats.[11] In the November 2013 final rule, NHTSA stated that the agency would be receptive to the argument that lap belts provide an equivalent level of safety to lap/shoulder belt combinations for side-facing seats.[12] NHTSA stated that the basis for any petition for exemption from this requirement would be that the applicant is unable to sell a bus whose overall level of safety is at least equal to that of a non-exempted vehicle.[13]

As noted in the notice of receipt, since issuing the November 2013 final rule, NHTSA has granted temporary exemptions to more than a dozen final stage manufacturers of entertainer buses for the same shoulder belt requirement of FMVSS No. 208 for side-facing seats on entertainer buses.[14]

In the most recent decision notice granting one of these exemptions, NHTSA's rationale for granting the exemption cited the uncertainties about shoulder belts on side-facing seats, the relatively small number of side-facing seats on buses subject to the November 2013 final rule, and that FMVSS No. 208 does not require shoulder belts on side-facing seats on any other vehicle type.[15] NHTSA stated that it believes the potential safety risk at issue is theoretical, as explained in the in November 2013 final rule, and the agency cannot affirmatively conclude, based on available information, that shoulder belts on side-facing seats are associated with a demonstrated risk of serious neck injuries in front crashes. NHTSA also stated that it believes a shoulder belt is of limited value on side-facing seats for the reasons explained in the final rule and further explained that it believed granting the exemption was consistent with the public interest and the Safety Act.

IV. Legacy Limousine and Luxury Coaches' Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Legacy Limousine and Luxury Coaches submitted a petition asking NHTSA for a temporary exemption from the shoulder belt requirement of FMVSS No. 208 for side-facing seats on its vehicles. The petitioner seeks to install Type 1 seat belts (lap belt only) at side-facing seating positions, instead of Type 2 seat belts (lap and shoulder belts) as required by FMVSS No. 208. Petitioner seeks this exemption because it states it is otherwise unable to sell a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles. 49 CFR 555.6(d). The only difference between the requested exempt vehicles and non-exempted vehicles is that the non-exempted vehicles have lap/shoulder belts at side-facing seating positions, while exempted vehicle would have no belts or lap belts at side-facing seating positions.

[7] 49 U.S.C. 30113(b)(3)(B).

[8] 75 FR 50958 (Aug. 18, 2010).

[9] *http://ec.europa.eu/enterprise/automotive/projects/safety_consid_long_stg.pdf.*

[10] 78 FR 70416, 70448 (Nov. 25, 2013), citing the 2004 Anton's Law final rule.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] The first petition was submitted by Hemphill Brothers Leasing Company, LLC (Hemphill). (Notice of receipt of petition, 84 FR 11735 (Mar. 28, 2019); notice of grant of petition, 84 FR 69966 (Nov. 14, 2019)). In its original petition, Hemphill stated that 39 ''other petitioners'' were covered by it. Later, NHTSA granted the 13 petitions submitted by All Access Coach Leasing LLC, Amadas Coach, Creative Mobile Interiors, D&S Classic Coach Inc., Farber Specialty Vehicles, Florida Coach, Inc., Geomarc, Inc., Integrity Interiors LLC, Nitetrain Coach Company, Inc., Pioneer Coach Interiors LLC, Roberts Brothers Coach Company, Russell Coachworks LLC, and Ultra Coach Inc. (Notice of receipt of the petitions, 85 FR 51550 (Aug. 20, 2022); notice of grant of petitions, 87 FR 33299 (June 1, 2022)). Most recently, NHTSA granted an exemption to Beat the Street Interiors, Inc. (BTS). (Notice of receipt of petition, 88 FR 25445 (Apr. 26, 2024); notice of grant of petition, 88 FR 78093 (Nov. 14, 2023)).

[15] 88 FR 25445.

Legacy Limousine and Luxury Coaches is a corporation that identifies itself as a final-stage manufacturer of entertainer-type motorcoaches. Legacy Limousine and Luxury Coaches states it is responsible for ensuring that the completed coach meets the FMVSS. The company typically receives a bus shell from an incomplete vehicle manufacturer and customizes the OTRB.

According to the petition, the bus shell received from the incomplete vehicle manufacturer generally contains the following components: exterior frame; driver's seat; dash cluster, speedometer, emissions light and emissions diagnosis connector; exterior lighting, headlights, marker lights, tum signal lights, and brake lights; exterior glass, windshield and side lights with emergency exits; windshield wiper system; braking system; tires, tire pressure monitoring system and suspension; and engine and transmission.

Petitioner states it then builds out the complete interior of the vehicle, which might include: roof escape hatch; fire suppression systems (interior living space, rear tires, electrical panels, bay storage compartments, and generator); ceiling, side walls and flooring; seating; electrical system, generator, invertor and house batteries; interior lighting; interior entertainment equipment; heating, ventilation and cooling system; galley with potable water, cooking equipment, refrigerators, and storage cabinets; bathroom and showers; and sleeping positions.

Pursuant to 49 CFR 555.5(b)(7), the petitioner must state why granting an exemption allowing it to install Type 1 instead of Type 2 seat belts in side-facing seats would be in the public interest and consistent with the objectives of the Safety Act.

Petitioner argues that NHTSA clearly had reservations about the safety effects of Type 2 seat belts on side-facing seats in motorcoaches. Petitioner notes that Congress mandated that NHTSA require Type 2 seat belts in side-facing seating positions in motorcoaches. NHTSA required it, per the direction from Congress, but NHTSA stated ''the addition of a shoulder belt at [side-facing seats on light vehicles] is of limited value, given the paucity of data related to side facing seats.'' [16] Petitioner raises the fact that NHTSA has also reiterated that there have been concerns expressed in literature in this area about shoulder belts on side-facing seats, noting in the final rule that, although the agency has no direct evidence that shoulder belts may cause serious neck injuries when applied to side-facing seats, simulation data indicate potential carotid artery injury when the neck is loaded by the shoulder belt.[17] Similarly, petitioner states that NHTSA also noted that Australian Design Rule ADR 5/04, ''Anchorages for Seatbelts,'' specifically prohibits shoulder belts for side-facing seats. Petitioner also notes that there was no testing before or after the issuance of the 2013 final rule requiring Type 2 seat belts on side-facing seats in motorcoaches.

Petitioner states that granting its petition would be consistent with the Safety Act and in the public interest because NHTSA's analysis in developing the 2013 final rule found no demonstrable increase in associated risk related to the use of Type 1 seat belts.

V. Notice of Receipt and Comments Received

On November 4, 2024, NHTSA published the notice of receipt for this petition to solicit input from the public.[18] Much of the information included in the notice of receipt is included in this grant notice. NHTSA received six comments in response to the notice of receipt. Commenters included the American Bus Association and five individuals. The American Bus Association strongly supported granting the petition. The five individuals who commented did not support granting the petition for the reasons summarized below. NHTSA includes its responses to the commenters' concerns below, too.

A few commenters expressed general support for shoulder belts in motorcoaches, stating that they significantly enhance safety. One commenter stated that the automotive industry has resisted the adoption of safety features, and seemed to indicate his belief that this petition was broadly seeking an exemption from all shoulder belt requirements, not just those in side-facing seats. This commenter also believes that the scope of the petition includes limousines, which it does not because it is focused on entertainer-type motorcoaches. Rather, the name of the company petitioning has limousine in the title, which may have been the source of confusion.

One individual commenter stated that she did not believe that the petitioner had proven its inability to sell vehicles outweighs the value of Type 2 seat belts in side-facing seating positions in motorcoaches. This commenter pointed to the ''Effectiveness of Lap/Shoulder Belts in the Back Outboard Seating Positions'' study, which stated that ''back seat lap/shoulder belts are 15 percent effective in reducing fatalities when compared to back seat lap belts.'' She also stated that competitors of the petitioner are producing vehicles with Type 2 seat belts in side-facing seating positions in motorcoaches.

One commenter suggests that industry produce a study to demonstrate that lap belts in side-facing seats are as effective as Type 2 seat belts, or that NHTSA independently conduct a limited study on the utility of shoulder harnesses for side-facing or perimeter seating to further understand their benefits and potential areas for improvement.

Other commenters misunderstood this petition for exemption as a petition for rulemaking, or other rulemaking effort. To be clear, this grant notice is not a rulemaking document and anything included in the grant notice applies to the petitioner alone.

NHTSA does not question the value of Type 2 seat belts for forward facing seating positions. The portion of the report cited by the commenter does not refer to information about side-facing seating positions, so it does not demonstrate the safety need suggested by the commenter. The report cited by one commenter that references 15 percent efficacy in reducing fatalities was describing a study that focused on passenger cars, which are not at issue in this decision notice. Additionally, the commenter did not specify which competitors she was referring to or what ''vehicles'' those competitors were producing, or whether those competitors were producers of entertainer-type motor coaches (as opposed to other motorcoaches). As such, the commenter did not provide NHTSA with enough information to use to assess the veracity of her claims opposing a grant.

NHTSA generally agrees that shoulder belts in motorcoaches increase safety, though the application of that statement to side-facing seats becomes complicated due to the issues discussed in the 2013 rulemaking. At that time, NHTSA stated that it believes a shoulder belt is of limited value on side-facing seats for the reasons explained in detail in the final rule. Until new research indicates that the situation has changed, NHTSA affirms its analysis in other similar exemptions and in the 2013 final rule.

As mandated by the Bipartisan Infrastructure Law (BIL), NHTSA is currently researching the protection of

[16] 78 FR 70448 (quoting the agency's Anton's Law final rule, which required lap/shoulder belts in forward-facing rear seating positions of light vehicles, 59 FR 70907).

[17] Eds.: Fildes, B., Digges, K., ''Occupant Protection in Far Side Crashes,'' Monash University Accident Research Center, Report No. 294, April 2010, pg. 57.

[18] 89 FR 87722.

occupants in limousines, including side-facing seats. This research includes full-scale crash testing and computational modeling of two types of limousines in both frontal and side impact crash modes. While this research does not directly apply to motorcoaches, it will include several observations of occupant response in side-facing seats, which will help clarify the unknowns related to shoulder belt loading of an occupant's neck in a side-facing seat.[19]

VI. Agency Analysis and Decision

After reviewing Legacy Limousine and Luxury Coaches' petition for temporary exemption and the comments received on it, NHTSA is granting the petition. Granting the petition will enable the petitioner to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle.

In the rulemaking implementing MAP–21's mandate for seat belts on motorcoaches, NHTSA's proposal in the NPRM was to allow manufacturers an option of installing Type 1 (lap belt) or Type 2 (lap and shoulder belt) on side-facing seats. That proposal was consistent with a provision in FMVSS No. 208 that allows lap belts for side-facing seats on buses with a GVWR of 4,536 kg (10,000 lb) or less. NHTSA proposed the option because the agency was unaware of any demonstrable increase in associated risk of lap belts compared to lap and shoulder belts on side-facing seats. That is, the agency believed that lap belts were not less protective than lap and shoulder belts for side-facing seats. As noted in the summary above, NHTSA finalized the requirement for Type 2 seat belts in side-facing positions because of a congressional mandate to do so. In that final rule, NHTSA finalized the requirement for Type 2 seat belts in side-facing positions, while also noting that the agency would be receptive to a petition for a temporary exemption that argues that lap belts provide an equivalent level of safety to lap/shoulder belt combinations for side-facing seats.

The petitioner does not provide information supporting its contentions about the potential for Type 2 seat belts in side-facing seats to cause injuries beyond reciting what NHTSA said on the matter in the 2013 final rule. Accordingly, NHTSA believes that the potential safety risk at issue is theoretical at this point; as explained in the November 2013 final rule, the agency cannot affirmatively conclude, based on available information, that shoulder belts on side-facing seats are associated with a demonstrated risk of serious neck injuries in frontal crashes. However, at the same time, NHTSA believes a shoulder belt is of limited value on side-facing seats for the reasons explained in the final rule. Given the uncertainties about shoulder belts on side-facing seats, the few side-facing seats on buses subject to the November 2013 final rule, and that FMVSS No. 208 does not require shoulder belts on side-facing seats on any other vehicle type, NHTSA is granting Legacy Limousine and Luxury Coach's petition for temporary exemption. The grant will permit the petitioner to install Type 1 seat belts (lap belt only) at side-facing seating positions, instead of Type 2 seat belts (lap and shoulder belts) at those positions, on the entertainer-type motorcoaches it manufactures. This exemption does not apply to forward-facing designated seating positions on the petitioner's vehicles. Under FMVSS No. 208, the forward-facing seating positions must have Type 2 lap and shoulder belts.

NHTSA believes that granting Legacy Limousine and Luxury Coach's petition is consistent with the public interest. The exemption will enable the applicant to sell buses whose overall level of safety is at least equal to that of non-exempted vehicles. Much of the petitioner's analysis for why granting its petition is in the public interest relies on NHTSA's own analysis in the rulemaking mandating Type 2 seat belts in side-facing seats. Chief among that analysis is the fact that NHTSA stated that it did not have enough data available at the time to demonstrate that the Type 2 seat belt for side-facing seatbelts had more than limited value. This dearth of data may change with future research, but since additional data is not yet available, NHTSA agrees that granting this petition is in the public interest.

Granting this petition is also consistent with the Safety Act. The requested exemption will not impact general motor vehicle safety because the exempted buses will provide overall safety at least equal to that of nonexempted buses. Further, Legacy Limousines and Luxury Coaches produces a small number of affected vehicles annually. The petitioner did not specify in its petition how many buses it would manufacture under the exemption but noted that ''fewer than 100 entertainer-type motorcoaches with side-facing seats are manufactured and enter the U.S. market each year.'' Thus, NHTSA concludes that the petitioner will manufacture very few vehicles relative to the 2,500 per manufacturer limit set forth in the Safety Act. Further, as explained below, in accordance with § 30113(h) of the Safety Act, prospective purchasers will also be notified of the exemption before making their purchasing decisions. The vehicles must have a label notifying prospective purchasers that the vehicles are exempted from the shoulder belt requirement of FMVSS No. 208 for the side-facing seats. NHTSA believes that this combination of factors reinforces that this grant notice is consistent with the Safety Act.

VII. Labeling

Under 49 CFR 555.9(b), a manufacturer of an exempted vehicle must securely affix to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle meets all applicable FMVSSs in effect on the date of manufacture ''except for Standard Nos. [Listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. __.'' This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c)(2), this information must also be included on the vehicle's certification label.[20]

The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations in which an exemption covers part, but not all, of an FMVSS. In this case, NHTSA believes that a blanket

[19] ''On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA or the Bipartisan Infrastructure Law), Public Law 117–58. Sections 23015 and 23023 of the Bipartisan Infrastructure Law (BIL) mandated that the Secretary of Transportation, NHTSA through delegation, shall conduct a variety of research and actions including research into the development of motor vehicle safety standards for side impact protection, roof crush resistance, and air bag systems for the protection of occupants in limousines with alternative seating positions—including perimeter seating arrangements, safety features and standards that aid evacuation in the event that an exit in the passenger compartment of a limousine is blocked, and amending FMVSS Nos. 207, 208, 209, and 210 such that they apply to limousines on each designated seating position, including side-facing seats.'' *https://www.regulations.gov/document/NHTSA-2024-0054-0001. See also* 2022 NHTSA Research Public Meeting, *available at https://downloads.regulations.gov/NHTSA-2022-0091-0007/attachment_7.pdf.*

[20] 49 CFR 555.9(c)(2) refers to § 567.5(c)(7)(iii) as the regulation setting forth the certification statement final-stage manufacturers are to use in their certification labels. That reference to § 567.5(c)(7)(iii) is outdated; it should be to § 567.5(d)(2)(v)(A). The certification label requirements for final-stage manufacturers formerly were in § 567(c)(7)(iii) but the requirements were moved to § 567.5(d)(2)(v)(A) (see 70 FR 7433 (Feb. 14, 2005)).

statement that the vehicle has been exempted from Standard No. 208, without an indication that the exemption is limited to the shoulder belt on side-facing seats, could be confusing. A purchaser might incorrectly believe that the vehicle has been exempted from all of FMVSS No. 208's requirements. For this reason, NHTSA believes the two labels should read in relevant part, ''except for the shoulder belt requirement for side-facing seats (Standard No. 208, Occupant Crash Protection), exempted pursuant to * * *.''

In accordance with 49 U.S.C. 30113(b)(3)(B)(iv), the applicant is granted NHTSA Temporary Exemption No. EX 25–01, from the shoulder belt requirement of 49 CFR 571.208 for side-facing seats on its motorcoaches. The exemption shall remain effective for the period designated at the beginning of this document in the **DATES** section.

(Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.95 and 501.5.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Sophie Shulman,

Deputy Administrator.

[FR Doc. 2025–01299 Filed 1–17–25; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2025–003]

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Defect Petition DP22–002 has been denied.

SUMMARY: This notice sets forth the reasons for the denial of defect petition DP22–002, submitted on April 29, 2022, by Mr. Sergio Betancourt (the petitioner) to NHTSA's Office of Defects Investigation (ODI). The petition requests that the Agency investigate alleged ''wrong-sized wrist pins'' in Mercedes-Benz vehicles equipped with the M274 engine (including the Metris minivan, GLC300, and C300). After conducting a technical review of the petitioner's submissions, information provided by Mercedes-Benz in response to the Agency's Information Request, and data within its own files, NHTSA has concluded that there is insufficient evidence to warrant further action at this time. Accordingly, the Agency has denied the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Tariq Bond, Vehicle Defects Division—D, Office of Defects Investigation, NHTSA 1200 New Jersey Ave. SE, Washington, DC 20590. Email: *Tariq.Bond@dot.gov.* Phone: (202) 366–5472.

SUPPLEMENTARY INFORMATION:

Introduction

Interested persons may petition NHTSA requesting that the Agency initiate an investigation to determine whether a motor vehicle or an item of replacement equipment does not comply with an applicable motor vehicle safety standard or contains a defect that relates to motor vehicle safety. 49 U.S.C. 30162(a)(2); 49 CFR 552.1. Upon receipt of a properly filed petition, the Agency conducts a technical review of the petition, material submitted with the petition, and any additional information. 49 U.S.C. 30162(a)(2); 49 CFR 552.6. The technical review may consist solely of a review of information already in the possession of the Agency or it may include the collection of information from the motor vehicle manufacturer and/or other sources. After conducting the technical review and considering appropriate factors, which may include, but are not limited to, the nature of the complaint, allocation of Agency resources, Agency priorities, the likelihood of uncovering sufficient evidence to establish the existence of a defect, and the likelihood of success in any necessary enforcement litigation, the Agency will grant or deny the petition. *See* 49 U.S.C. 30162(a)(2); 49 CFR 552.8.

Background Information

On February 4, 2022, the petitioner filed a Vehicle Owner Questionnaire (VOQ) designated ODI 11450360 reporting that the petitioner's vehicle made a popping sound and began to lose power while driving on a freeway at 70 mph. Petitioner stated that as he applied more accelerator input, the vehicle began to shake violently and began to expel white smoke through its exhaust. The petitioner safely exited traffic and arranged for the vehicle to be towed to a Mercedes dealership, where it was determined that the vehicle had a cracked piston. The dealer gave the petitioner a repair estimate for engine removal and diagnosis of a cracked piston, along with several repair options that included replacement of the catalytic converter and oxygen sensors, the damaged piston, and, contingent on damage identified during the diagnostic inspection, replacement of all four pistons and an engine rebuild.

On April 29, 2022, the petitioner submitted a petition requesting that the Agency initiate an investigation into alleged ''wrong-sized wrist pins'' in all Mercedes-Benz models equipped with a variation of the M274 engine. The petitioner cited Mercedes technical service bulletin (TSB) LI03.10–P–060916 as the basis for the wrist pin concern. The petition included the petitioner's vehicle repair estimate, the TSB, and screenshots of web forum statements from other Mercedes owners discussing either engine durability problems or the TSB.

TSB LI03.10–P–060916

The first iteration of TSB LI03.10–P–060916 was released on February 27, 2015. The TSB was updated 16 additional times through January 30, 2019. The TSB addressed the following complaint condition: ''Clattering/rattling or knocking noise from the crank assembly of the engine when cold at oil temperatures up to approx. 50°C mostly heard on engine deceleration'' and listed the cause as under analysis. The TSB gave further instructions on the collection of information and discouraged the replacement of any components.

TSB Version 4, issued on September 21, 2015, introduced engine build clean points (March 27, 2015 or April 20, 2015 depending on the engine plant); cause (unfavorable tolerance of the piston wrist pin resulting in enlarged end float of the connecting rod in the piston); and remedy (compare the complaint vehicle sound to an enclosed sound file under various operating conditions and then if verified, replace the pistons, connecting rods, and bearings, using updated pistons that include updated wrist pins).

Petitioner Vehicle History

The petitioner's vehicle is a 2015 Mercedes C300 equipped with the M274 (LS) 4-cylinder 2.0L direct-injected/turbocharged engine fueled by 91 Octane or higher gasoline. A synopsis of the petitioner's vehicle history leading up to the events prompting the petition is listed as follows:

Date	Mileage	Action(s)
• Apr 2015		Vehicle manufactured. .

Date	Mileage	Action(s)
• Sept 2015	.....	Titled to Owner #1
• Mar 2016	3,065	TSB LI03.10–P–060916 performed: R&R 4 pistons and connecting rods.
• Jan 2017	7,618	Vehicle service incl. oil change.
• Apr 2017	.....	Damage Report: Front; Left; Rear; Minor to Moderate.
• Nov 2017	.....	Damage Report: Rear; Minor.
• Dec 2017	.....	Damage Report: Front; Moderate/accident reported.
• Mar 2018	16,409	Vehicle service incl. oil change.
• Oct 2018	17,047	Titled to Owner #2.
• Nov 2018	17,746	Vehicle service—tire pressure TPMS.
• Feb 2021	26,927	Vehicle service incl. oil change.
• Feb 2021	27,140	Titled to Owner #3 (Petitioner).
• Aug 2021	.....	Accident Reported (no details available).
• Jan 2022	51,672	Engine issue while driving.

Alleged Defect and Scoping

The piston wrist pin links the upper narrow end of the connecting rod to the piston via two holes in the piston skirt. Proper operation requires a precise enough fit to prevent vibration while allowing sufficient lubrication and clearance to permit smooth rotation relative to the piston as it reciprocates within the cylinder bore. Based on the latest version of the TSB, customers may complain of clattering, rattling, or knocking noises from the engine, particularly with cold engine oil temperatures upon deceleration. This condition is attributed to unfavorable piston-wrist pin tolerance, leading to ''enlarged end float.'' Technicians are instructed to compare complaint vehicle sounds to a reference sound file and, if they match, replace connecting rods, pistons, and bearings from a dedicated replacement kit. Mercedes has asserted that this condition will not cause mechanical engine damage (evidenced by a lack of any such engine damage caused by wrist pin issues in the subject vehicles).

ODI focused its review on the petitioner's vehicle engine configuration, which also falls within the scope of the TSB: a MY 2015 Mercedes C300 vehicle manufactured prior to May 2, 2015. The subject engine includes turbocharging, the requirement for 91 Octane fuel, and the inclusion of piston wrist pins coated with diamond-like carbon (DLC), whereas the M274 engine variant included in the Metris minivan (cited in the petition) lacks the DLC coated wrist pin forming the basis of the petitioner's concerns. Thus, ODI did not include Metris vehicles in its analysis.

ODI Analysis

ODI searched its VOQ data for references to wrist pins, symptoms comparable to those reported by the petitioner, loss of motive power, and general engine complaints such as noise (safety and non-safety related). Out of the 86,112 MY 2015 C300 vehicles produced, ODI was able to identify 96 related VOQs submitted to NHTSA. These complaints did not include any confirmed cases of wrist pin(s) causing a loss of motive power without the ability to restart, including the VOQ submitted by the petitioner.

Of the 96 VOQs, eight consumers cited ''wrist pins'' in their complaint narrative and only three of those eight VOQs alleged symptoms that could be interpreted as a reduction of motive power, similar to an operational limp mode or reduction in performance. These VOQs primarily referenced engine noises, and one claimed that the ''engine broke'' without specifically describing any safety-related details to associate that complaint with a loss of motive power. Two VOQs mentioned wrist pins without any explanation of symptoms. While some VOQs have shown evidence of general engine part failure, they are uncorrelated to any trend, and further, ODI was unable to verify that any of these alleged wrist pin issues led to engine failure.

Finally, the petitioner's vehicle was included within these VOQs that mentioned wrist pins, but there was insufficient evidence to link any failure with wrist pins in the Petitioner's submissions, including repair records.

Petitioner's VOQ (11450360) reported losing power and shaking while pushing the accelerator, and engine power loss while white smoke was emitted from the exhaust pipe. The description further states that the petitioner later took the vehicle to a service center and the engine was diagnosed with having a cracked piston and included an invoice from the service center. The VOQ further describes that the subject (wrist pin) TSB was discovered later and implied a correlation between the conditions covered by that bulletin and the cause of his vehicle's engine failure. However, the petitioner was evidently unaware that his vehicle's engine had already received all new wrist pins and pistons as per the TSB in March 2016, when the first owner of the vehicle completed the servicing recommended in TSB LI03.10–P–060916 (as shown above in the summary of the vehicle's service history).

Analysis of VOQs and data received from Mercedes-Benz indicates no relationship between wrist pin repairs and engine failure or loss of motive power. Broader searches of both data sources for engine stalling related to engine durability were not identified.

An additional search of a commercial vehicle repair and diagnostics database for engine stalling related to engine durability for the 2015 Mercedes C300 revealed no wrist pin-related engine mechanical damage allegations of any kind.

Based on the nature of wrist pin-related piston skirt wear and the absence of a field data trend showing an engine stalling condition linked to wrist pins in particular or broken pistons in general, ODI has determined that no formal investigation is warranted. Accordingly, the Agency is denying the petition. As with all potential motor vehicle safety risks, NHTSA will continue to review any new information or incidents as they are submitted to the Agency.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.95(a) and part 501.[1]

Eileen Sullivan,

Associate Administrator, Enforcement.

[FR Doc. 2025–01351 Filed 1–17–25; 8:45 am]

BILLING CODE 4910–59–P

[1] The authority to determine whether to approve or deny defect petitions under 49 U.S.C. 30162(d) and 49 CFR part 552 has been further delegated to the Associate Administrator for Enforcement.

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2024–0151]

Pipeline Safety: Project-Specific Waiver of the Build America, Buy America Act Requirements for City Utilities of Springfield, Missouri for Certain Products Under the Natural Gas Distribution Infrastructure Safety and Modernization Grant Program

AGENCY: Pipeline and Hazardous Materials Transportation, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is waiving the Build America, Buy America (BABA) Act's domestic preference requirements for certain products that City Utilities of Springfield, Missouri, (City Utilities) will use in its Natural Gas Distribution Infrastructure Safety and Modernization (NGDISM) grant project, due to unavailability, project cost, or public good. The waiver would exempt the following products used in City Utilities' project from BABA requirements on the basis of nonavailability: locator markers; meter stops with insulated unions; magnesium anodes; 1A meter swivels, nuts, and washers; and direct bury lugs.

DATES: The effective date of the waiver is January 22, 2025.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Louis Cardenas, Office of Pipeline Safety, by phone at 832–208–0132, or by email at *Louis.Cardenas@dot.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of this notice and all background material may be viewed online at *https://www.regulations.gov* using the docket number listed above. Electronic retrieval help and guidelines are also available at *https://www.regulations.gov.* An electronic copy of this document also may be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* or the Government Publishing Office's website at *www.GovInfo.gov.*

Background

The NGDISM grant program was authorized by the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58). The program provides federal funding to municipal- or community-owned natural gas utilities (not including for-profit entities) to repair, rehabilitate, or replace their natural gas distribution pipeline systems or portions thereof, or to acquire equipment to (1) reduce incidents and fatalities, and (2) avoid economic losses. The IIJA appropriates $200 million per year for each of Fiscal Years (FY) 2022 through 2026 for the NGDISM grant program ($1 billion in total). The IIJA provides that two percent of this amount shall be used to pay the administrative expenses of the NGDISM grant program. Accordingly, the total amount expected to be awarded as grant funding over the five-year period is $980,000,000.

Congress also enacted the BABA Act, providing that ''none of the funds made available for a Federal financial assistance program for infrastructure . . . may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.'' IIJA, Public Law 117–58, sec. 70914(a). Under IIJA section 70914(b), PHMSA has authority to waive the requirements of BABA (1) if a domestic product is unavailable; (2) if using a domestic product would present an unreasonable cost; or (3) if application of BABA would not be in the public interest.

In FY2022, City Utilities was awarded $10 million in NGDISM grant funding to help fund its ''Legacy Plastic Pipe Replacement Project,'' which it initiated in 2010. Of the $10 million awarded for this project the materials covered by the waiver only represent an estimated 0.72% or $72,000. City Utilities operates approximately 500 miles of ''Aldyl A'' plastic distribution pipeline within disadvantaged areas of Springfield, Missouri. The $10 million awarded would allow City Utilities to speed up its ''Legacy Plastic Pipe Replacement Project'' by funding the replacement of approximately 13.7 miles of legacy Aldyl A pipe and approximately 1,409 legacy plastic gas services with modern, industry-standard polyethylene pipe. City Utilities will also use the grant funds to install a locator system on the new pipeline, allowing the pipe to be located during future excavation activities that may occur near the pipeline, thereby preventing damage to the pipeline and improving pipeline safety.

Proposed Waiver and Request for Comments

On September 27, 2024, PHMSA published a Notice of Proposed Project-Specific Waiver of the Build America, Buy America Act Requirements for City Utilities of Springfield, Missouri for Certain Products and Request for Comment (89 FR 79362) for certain products on the basis of nonavailability. The specific essential products City Utilities sought a waiver for are listed below:

- *Locator Markers:* Locator markers are small devices placed on buried pipe and valves designed to help operators locate the facilities to help prevent damage to the pipe from excavation equipment. (NAICS: 325211)
- *Meter Stops with Insulated Union:* Meter Stops are valves that are installed on a natural gas riser upstream of the meter to serve as a shut-off valve to control the flow of gas into the meter and subsequently into the building's gas system. They are crucial for maintenance and emergencies, or when the gas service needs to be shut off. Insulated Unions are fittings attached to the above ground portion of a natural gas utility riser to electrically insulate (*i.e.,* isolate) a structure from the pipeline system to prevent corrosion. (NAICS: 332919)
- *Magnesium Anodes:* Magnesium anodes are blocks of magnesium that are attached to steel pipe to protect against corrosion damage. (NAICS: 335999)
- *1A Meter Swivels, Nuts, and Washers:* Meter swivels, nuts, and washers are fasteners used to secure a gas meter assembly. (NAICS: 33251/332722)
- *Direct Bury Lugs:* Direct Bury Lugs are waterproof connectors used for splicing low-voltage wires, like those used in tracer wire, without cutting the main line wire. They simplify installation and increase the longevity of the connection with pre-filled silicone sealant for waterproofing. (NAICS: 332999)

On December 13, 2023, City Utilities issued an Invitation for Bids (''IFB'') seeking, among other products, locator markers; meter stops with insulated union; magnesium anodes; 1A meter swivels, nuts, and washers; and direct bury lugs. The IFB remained open for more than a month, between December 13, 2023, and January 15, 2024. In response to the IFB, City Utilities received seven responsive bids. However, each of the respondents to the IFB represented that they would not be able to certify compliance with BABA requirements for the above listed products.

Additionally, prior to City Utilities requesting this waiver, PHMSA independently engaged the supplier scouting services of the National Institute of Standards and Technology

Manufacturing Extension Partnership (NIST MEP) to search for domestic manufacturers of 1A meter swivels, nuts, and washers. At the conclusion of the process, NIST MEP identified several companies who stated they had the capability to manufacture these products. However, these companies declined to do so because it would be cost prohibitive for them to begin domestic manufacture of these products in the quantities that City Utilities needs to purchase for its NGDISM project. Accordingly, supplier scouting did not result in identification of any sources that could or would manufacture these products domestically.

On these bases, PHMSA has determined that locator markers; meter stops with insulated unions; magnesium anodes; 1A meter swivels, nuts, and washers; and direct bury lugs are not manufactured in the United States in sufficient and reasonably available quantities.

Discussion of Public Comments

PHMSA has reviewed the single supportive comment received in the initial 15-day comment period during our consideration of the proposed waiver, as required by Section 70914(c)(2) of the IIJA. The public comment regarding the City Utilities project specific NGDISM waiver was received by October 15, 2024. The commenter noted its potential need for the same products and they ''fully support the granting of this waiver to City Utilities of Springfield, MO.''

Summary of Changes in the Final Waiver

There are no changes to the proposed waiver. As there was a single public comment in support of this waiver, there are no public comments that require changes to the proposed waiver.

Final Waiver

Based on its review of the waiver request, and in consideration of supportive comment received on the proposed waiver, PHMSA is waiving the requirements of BABA for the above listed products for City Utilities' ''Legacy Plastic Pipe Replacement'' project funded by NGDISM grant funds. The waiver is applicable only to City Utilities' project; it is not applicable to any other NGDISM grant recipient's projects. The waiver is effective from the date of the final waiver through the period of performance and closeout of PHMSA's financial assistance for the project, which is estimated to be June 30, 2029.

Issued in Washington, DC, on January 15, 2025, under authority delegated in 49 CFR 1.97.

Tristan H. Brown,

Deputy Administrator.

[FR Doc. 2025–01356 Filed 1–17–25; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2024–0131]

Pipeline Safety: Waiver of the Build America, Buy America Act Requirements for Gas Service Risers, Gas Service Regulators, and Gas Meters Under the Natural Gas Distribution Infrastructure Safety and Modernization Program

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is waiving the Build America, Buy America (BABA) Act's domestic preference requirements for certain products widely used in natural gas distribution systems on the basis of nonavailability. The waiver will apply to awards obligated on or after the effective date of the final waiver for recipients of funding under the Natural Gas Distribution Infrastructure Safety and Modernization (NGDISM) Grant Program and, in the case of awards obligated prior to the effective date, all expenditures for covered products incurred after the effective date. The waiver will expire after three years after the effective date of the final waiver.

DATES: The effective date of the waiver is January 22, 2025. The waiver will expire on January 21, 2028.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Ms. Shakira Mack, Office of Pipeline Safety, by phone at 202–366–5090, or by email at *Shakira.Mack@dot.gov.* Office hours for PHMSA are from 8:30 a.m. to 5:00 p.m. EST, Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of this Notice and all background material, along with electronic retrieval help and guidelines, may be viewed online at *https://www.regulations.gov* using the docket number listed above. An electronic copy of this document also may be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

Background

The NGDISM program was authorized by the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58). The program provides federal funding to municipal- or community-owned natural gas utilities (not including for-profit entities) to repair, rehabilitate, or replace their natural gas distribution pipeline systems or portions thereof, or to acquire equipment to (1) reduce incidents and fatalities and (2) avoid economic losses. The IIJA appropriates $200 million per year for each of fiscal years (FY) 2022 through 2026 for the NGDISM program ($1 billion in total). The IIJA provides that two percent of this amount shall be used to pay the administrative expenses of the NGDISM program. Accordingly, the total amount expected to be awarded as grant funding over the five-year period is approximately $980,000,000. In FY22, PHMSA awarded approximately $196 million to 37 municipal- and community-owned natural gas utilities across the nation to fund pipeline replacement projects and the purchase of leak-detection equipment. In FY23, PHMSA awarded $391 million to 65 applicants; and in FY24 PHMSA awarded another $196 million to 56 applicants. This brings current overall program totals to $784 million granted to 158 applicants, where funds are rehabilitating the natural gas system or acquiring equipment to improve public safety and reduce economic losses.

PHMSA expects that a very small portion of NGDISM funding (less than about $1.9 million) would be spent each year on the products waived from BABA requirements.

In the same legislation, Congress also enacted the BABA Act, which provides that ''none of the funds made available for a Federal financial assistance program for infrastructure . . . may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.'' See IIJA, Public Law 117–58, sec. 70914(a). Under IIJA Section 70914(b), PHMSA has authority to waive the requirements of BABA (1) if a domestic product is unavailable; (2) if using a domestic product would present an unreasonable cost; or (3) if application of BABA would not be in the public interest.

On August 13, 2024, PHMSA issued a Notice of Proposed Nonavailability Waiver of Buy America Requirements for certain products, on the basis of nonavailability, and in accordance with Section 70914(c) of BABA, PHMSA sought public comments on the proposed waiver. The products proposed to be waived included gas service risers and gas meters. The notice also sought comment on the availability of compliant gas service regulators. PHMSA considers these products to be either ''iron or steel products'' or ''manufactured products'' under BABA depending on the cost of the iron and steel components incorporated in each product. See 2 CFR 184.3. A more detailed description of each product is provided below:

- *Gas Service Risers:* Service risers are sections of pipe that provide a 90-degree connection between underground gas service lines and aboveground meter assemblies. Risers are made primarily of steel but typically also include polyethylene components and may include a protective sleeve over the polyethylene components. Service risers are manufactured in a variety of sizes and may be rigid or flexible.
- *Gas Meters:* Gas meters are placed outside of a residence or business that utilizes natural gas and allows the utility operator to track how much gas is being used by the residence or business. Gas meters incorporate a variety of components made of different materials.
- *Gas Service Regulators:* Gas service regulators are devices incorporated into a meter assembly designed to allow gas from a higher-pressure service line to enter a residence's or business's gas lines at a lower pressure ideal for everyday use.

During its initial market research, PHMSA identified a single company that currently produces BABA-compliant service regulators. Accordingly, PHMSA did not include gas service regulators in the proposed waiver it published on August 13, 2024, as the market research did not support a clear finding of nonavailability. However, some NGDISM recipients expressed concerns about whether a single company would be able to supply the volume of regulators needed by all NGDISM award recipients. As it is difficult to know exactly the anticipated demand for gas service regulators during the life of the NGDISM program, it is also difficult to determine if one company can supply all regulators needed. PHMSA engaged with the company to determine its production capacity for gas service regulators, but PHMSA lacked information on the anticipated demand during the life of the NGDISM program. As gas service regulators are a critical safety component of gas distribution systems, a lack of sufficient supply could unduly delay the safety-critical construction projects funded by the NGDISM program. As a result, PHMSA specifically requested comments from industry on the demand for gas service regulators purchased through the NGDISM program to inform its future consideration of any potential waivers of BABA requirements for service regulators.

Discussion of Public Comments

PHMSA has considered all comments received in the initial 15-day comment period during its consideration of the proposed waiver, as required by section 70914(c)(2) of the IIJA. Public comments regarding the NGDISM programmatic waiver were received through August 28, 2024. PHMSA received a total of seven comments on the proposed waiver. The majority of the commenters noted PHMSA's lack of coverage for certain products in the waiver and provided information on the insufficient quantities of certain items that were available and met domestic content requirements. Commenters also noted the significant lag time between order placement and delivery, and limited production capacity, which results in limited or no availability of the product. The ensuing lack of availability would impede or possibly halt any ongoing natural gas system construction. Some of the comments noted supply delays ranging from months to possibly two years and result in significant overall project construction delays. Public comments also specifically requested a broadened scope to expand the range of gas service anodeless risers, gas meters, gas service regulators, and additional materials, and to extend the waiver duration from three years to five years.

One commenter stated that ''PHMSA should require the use of domestically produced aluminum extrusions in the production of gas meters,'' opining that PHMSA should mandate aluminum extrusions be used for gas meter manufacture. This proposal is beyond the scope and consideration of ''Buy America Preferences for Infrastructure Projects,'' 2 CFR 184 (Oct. 1, 2024). This should be addressed on a broader range and scale, along with various technical studies, analyses, and congressional mandates that consider broad industry requirements for aluminum extrusion in the gas meter manufacturing industry. These concerns cannot be addressed within the programmatic waiver for the NGDISM Grants program, which is limited to the program grantees and beyond the scope and purpose of this grant program.

Also, the market share relative to industry is negligible. The 2023 North American Gas Meter Market size was $3.7 billion.[1] With current NGDISM program awards of approximately 6,000 meters per year, proposed NGDISM spending on gas meters would be approximately $1.2 million per year. The resulting potential market share of 0.04 percent would not provide significant support to BABA compliance.

In response to PHMSA's specific request for information about demand for gas service regulators through the NGDISM grant program, commenters representing eligible NDGISM grantees provided an estimated total quantity of 40,911 gas service regulators (both current and projected) during the fiscal year program period (FY 2022 thru FY 2026) and across 30 systems. The average annual market size would be $1.2 million for anticipated NGDISM projects. This would equate to a 0.2 percent market share of a 2024 gas pressure regulator estimated market value of $552.8 million dollars.[2] Given this small gas service regulator market share, the waiver would have a negligible effect on both industry and BABA compliance and create impediments to grantees' efforts to enhance safety and reduce economic loss as a result of constricted availability.

The remaining commenters, all potential NGDISM recipients, noted similar concerns. Specifically, their concerns focused on the timely availability and limited scope of gas service anodeless risers, gas meters, and gas service regulators. This is due to a single sole provider that may not be able to timely meet the concurrent demand from all the various grant projects. This singular provider would be responsible for the influx for various models and quantities; varying geographical delivery locations and delivery dates to meet operator schedules; and most importantly, maintaining continued public safety. Any delays or inability by

[1] Global Market Insights. North America Gas Meter Market Size—By Type (Diaphragm Meters, Rotary Meters, Turbine Meters, Ultrasonic Meters, Coriolis Meters), By Technology (Smart, Conventional), By End Use, By Distribution Channel & Forecast, 2024–2032.Global Market Insights. September 2024. *https://www.gminsights.com/industry-analysis/north-america-gas-meter-market.*

[2] FactMR. Gas Pressure Regulators Market Outlook (2024 to 2034). *Fact MR.* October 2024. *https://www.factmr.com/report/gas-pressure-regulator-market.*

the single provider could result in noncompliance, loss of use of a basic utility, and public exposure to safety risks from failing equipment. In addition, the limited selection could force various operators to install risers or regulators that are unfamiliar to their technicians or not compatible with their existing operating equipment. This would increase the grantee's costs by requiring the purchase of new associated compatible equipment and additional training, and increase the risk of operator error on new and unfamiliar equipment.

One commenter noted concerns regarding the domestic availability of additional products (transition fittings, electro-fusion tapping tees, lockwing valves, magnesium anodes, service adapters, curb valves, caps, couplings, and stiffeners) and suggested increasing the waiver duration from three to five years. Additional materials may be considered in future waivers.

The proposed waiver facilitated a broad range of interest and input from the public and other stakeholders, and PHMSA greatly appreciates the robust feedback from members of the public. The comments are available on the docket at *https://www.regulations.gov,* Docket (PHMSA–2024–0131).

Summary of Changes in the Final Waiver

PHMSA is making two changes from the proposed waiver in response to the information received during the public comment period. First, PHMSA is clarifying that all types of risers are included in the waiver. This directly addresses concerns regarding the availability of BABA compliant gas service risers. Secondly, PHMSA is including gas service regulators in this waiver. Based on responses to questions that PHMSA posed regarding the availability of sufficient quantities of compliant gas service regulators, PHMSA finds that the availability and appropriate selection of gas service regulators that are BABA compliant are not available in timely and sufficient quantities to meet NGDISM grantees' operating conditions and project schedule requirements. Therefore, PHMSA has added gas service regulators. The waiver for meters is unchanged from the proposed waiver. Public comments to the proposed waiver supported including meters and no changes for meters have been made in the final waiver.

Final Waiver

Based on its review of the waiver request, and in consideration of comments received on the proposed waiver, PHMSA has determined that gas service risers, gas meters, and gas service regulators are not manufactured in the United States in sufficient and reasonably available quantities. PHMSA is waiving BABA requirements for gas service risers, gas meters, and gas service regulators. The waiver will apply to obligations made on or after the effective date of the final waiver for recipients of funding under the NGDISM Grant Program and, in the case of awards obligated prior to the effective date, all expenditures for covered products incurred after the effective date and will expire after three years.

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Tristan H. Brown,

Deputy Administrator.

[FR Doc. 2025–01320 Filed 1–17–25; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2024–0152]

Pipeline Safety: Project-Specific Waiver of the Build America, Buy America Act Requirements for Certain Products Used by Philadelphia Gas Works Under the Natural Gas Distribution Infrastructure Safety and Modernization Grant Program

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is waiving the Build America, Buy America (BABA) Act's domestic preference requirements for certain products that Philadelphia Gas Works (PGW) needs for its Natural Gas Distribution Infrastructure Safety and Modernization (NGDISM) grant project due to lack of availability, unreasonable cost, or public good. The waiver would exempt the following products used in PGW's project from BABA requirements on the basis of nonavailability: electro-fusion tapping tees, anodeless risers, transition fittings, lockwing valves, magnesium anodes, service adapters, curb valves, caps, couplings, and stiffeners.

DATES: The effective date of the waiver is January 22, 2025.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Louis Cardenas, Office of Pipeline Safety, by phone at 832–208–0132 or by email at *Louis.Cardenas@dot.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of this notice and all background material may be viewed online at *https://www.regulations.gov* using the docket number listed above. Electronic retrieval help and guidelines are also available at *https://www.regulations.gov.* An electronic copy of this document also may be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* or the Government Publishing Office's website at *www.GovInfo.gov.*

Background

The NGDISM grant program was authorized by the Infrastructure Investment and Jobs Act (''IIJA'') (Pub. L. 117–58). The program provides federal funding to municipal- or community-owned natural gas utilities (not including for-profit entities) to repair, rehabilitate, or replace their natural gas distribution pipeline systems or portions thereof, or to acquire equipment to (1) reduce incidents and fatalities, and (2) avoid economic losses. The IIJA appropriates $200 million per year for each of Fiscal Years (''FY'') 2022 through 2026 for the NGDISM grant program ($1 billion in total). The IIJA provides that two percent of this amount shall be used to pay the administrative expenses of the NGDISM grant program. Accordingly, the total amount expected to be awarded as grant funding over the five-year period is $980,000,000.

Congress also enacted the BABA Act, providing that ''none of the funds made available for a Federal financial assistance program for infrastructure . . . may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.'' IIJA, Public Law 117–58, sec. 70914(a). Under IIJA section 70914(b), PHMSA has authority to waive the requirements of BABA (1) if a domestic product is unavailable; (2) if using a domestic product would present an unreasonable cost; or (3) if application of BABA would not be in the public interest.

Across three fiscal years (FY2022, FY2023, and FY2024) PGW has been awarded $125 million in NGDISM grant funding to help fund the replacement of ''at-risk'' natural gas cast iron pipe within the city of Philadelphia as part

of its ''Citywide Neighborhood Safety and Modernization'' project. Of the $125 million awarded for this project the materials covered by the waiver only represent an estimated 0.11% or $140,201. The project, which will be located entirely within Philadelphia's historically disadvantaged neighborhoods, will replace approximately 67 miles of aging cast iron, ductile iron, and unprotected steel pipelines with modern polyethylene plastic pipe that is less susceptible to breakage due to earth movement—the biggest threat to PGW's existing cast iron pipelines, especially during the winter months.

Proposed Waiver and Request for Comments

On September 27, 2024, PHMSA published a Notice of Proposed Project-Specific Waiver of the BABA Act Requirements for Certain Products Used by Philadelphia Gas Works and Request for Comment (89 FR 79360) for certain products on the basis of nonavailability. The specific essential products PGW sought a waiver for are listed below:

- *Electro-fusion tapping tees:* Electro-fusion tapping tees are rigid sections of polyethylene pipe that are fused to the top of an existing polyethylene pipeline. They are used to provide a branch outlet from a gas main to a service line. (NAICS: 326122)
- *Anodeless risers:* Anodeless risers are sections of pipe that provide a 90-degree connection between underground gas service lines and aboveground meter assemblies. Risers are typically made of steel but may also include polyethylene components and may include a protective sleeve over the polyethylene components. Anodeless risers are manufactured in a variety of sizes and may be rigid or flexible. (NAICS: 33296)
- *Transition fittings:* Transition fittings are adapters that facilitate below-grade transition from polyethylene pipe to steel pipe before it exits the ground. The steel section of the fitting is epoxy-coated for corrosion resistance. Transition fittings incorporate both steel and polyethylene components. (NAICS: 332919)
- *Lockwing valves:* Lockwing valves are installed at the ''head'' of a service line, upstream of a meter assembly, and are used to stop or start the flow of gas. They are lockable to resist tampering or accidental opening of the valve. They are typically made of brass. (NAICS: 332919)
- *Magnesium anodes:* Magnesium anodes are blocks of magnesium that are attached to steel pipe in order to protect against corrosion damage. (NAICS: 335999)
- *Service adapters:* Service adapters are threaded fittings used on a meter set assembly above ground. They are typically made of steel and are used to connect two pieces of steel pipe in a meter assembly. (NAICS: 332919)
- *Curb valves:* Curb valves are shut-off valves installed in a readily accessible outside location (such as in the footway). They are used to control the gas upstream of a gas meter, but downstream of the main service tee in the street. Curb valves can be made of either polyethylene or steel. PGW requires the use of polyethylene curb valves in its system. Accordingly, PHMSA proposes to waive BABA requirements for polyethylene curb valves. (NAICS: 326122)
- *Caps:* Caps are added to a pipeline in order to close off sections of the pipeline or to cap off dead-end lines. Caps can be made of either polyethylene or steel, depending on the material of the pipe capped off. PGW is not able to find a BABA-compliant source for steel caps. Accordingly, PHMSA proposes to waive BABA requirements for steel caps. (NAICS: 332919)
- *Couplings:* Couplings can be used to connect two sections of pipe made from either polyethylene, steel, ductile iron, or cast iron. PGW requires the use of steel couplings on its distribution system. Accordingly, PHMSA proposes to waive BABA requirements for couplings made of steel. (NAICS: 332919)
- *Stiffeners:* Stiffeners are inserted into plastic pipe alongside couplings to support the pipe, mitigate stress, and provide a long-lasting seal. (NAICS: 326122)

To conduct market research, PGW initially engaged with its normal suppliers of gas distribution pipeline parts. Eight of PGW's normal suppliers indicated that they could provide BABA-compliant products but were not willing to certify to BABA compliance. One of PGW's alternate suppliers indicated it could provide BABA-compliant caps, couplings, and stiffeners, albeit at an increased cost and a long lead time, causing an estimated 36-week delay in PGW's construction schedule that is untenable for this project. PGW also reached out to neighboring gas utilities to inquire about their sources but was likewise unable to locate a domestic source.

On April 10, 2024, in an effort to locate additional alternative suppliers, PGW issued a Request for Quotation (''RFQ'') titled ''One Time Purchase of BABA Compliant Alternatives.'' The RFQ was publicly posted to PGW's Procureware website, and was open from April 10, 2024, until April 29, 2024. PGW invited 80 suppliers and manufacturers to submit bids. As a result of the RFQ, PGW identified BABA-compliant alternatives for eight products for which PGW was not previously able to find domestic sources. However, PGW still was not able to find suitable or readily available alternatives for the 10 products proposed to be waived herein.

Discussion of Public Comments

PHMSA has reviewed the single supportive comment received in the initial 15-day comment period during our consideration of the proposed waiver, as required by section 70914(c)(2) of the IIJA. The public comment regarding the PGW project specific NGDISM waiver was received by October 15, 2024. The commenter noted the potential need for the same products and that the commentor ''fully support[s] the granting of this waiver to Philadelphia Gas Works.''

Summary of Changes in the Proposed Waiver

There are no changes to the proposed Waiver. As there was a single public comment in support of this waiver, there are no public comments that require changes in the proposed waiver.

Final Waiver

Based on its review of the waiver request, and in consideration of the supportive comment received on the proposed waiver, PHMSA is waiving the requirements of BABA for the above listed products for PGW's ''Citywide Neighborhood Safety and Modernization'' project funded by NGDISM grant funds. The waiver is applicable only to PGW's project; it is not applicable to any other NGDISM grant recipient's projects. The waiver is effective from the date of the final waiver through the period of performance and closeout of PHMSA's financial assistance for the project, which is estimated to be June 30, 2029.

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Tristan H. Brown,

Deputy Administrator.

[FR Doc. 2025–01365 Filed 1–17–25; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one entity that has been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this entity are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: This action was issued on January 3, 2025. See Supplementary Information section for relevant date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202–622–2420; Assistant Director for Sanctions Compliance, 202–622–2490 or *https://ofac.treasury.gov/contact-ofac.*

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website: *https://ofac.treasury.gov.*

Notice of OFAC Action

On January 3, 2025, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following entity are blocked under the relevant sanctions authorities listed below.

Entity:

1. INTEGRITY TECHNOLOGY GROUP, INCORPORATED (Chinese Simplified: 永信至成科技集团股份有限公司) (a.k.a. BEIJING INTEGRITY TECHNOLOGY COMPANY, LIMITED; a.k.a. "YONGXIN ZHICHENG TECHNOLOGY GROUP COMPANY, LIMITED"), Room 103, Building 6, No. 9, Fenghao East Road, Haidian District, Beijing, China; Website www.integritytech.com.cn; Organization Established Date 02 Sep 2010; Organization Type: Computer programming activities; Equity Ticker 688244 CH; Unified Social Credit Code (USCC) 91110108562135265P (China) [CYBER2].

   Designated pursuant to section l(a)(ii) of Executive Order 13694 of April 1, 2015, "Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities," 80 FR 18077, 3 CFR, 2015 Comp., p. 297, as amended by Executive Order 13757 of December 28, 2016, "Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities," 82 FR 1, 3 CFR, 2016 Comp., p. 659 (E.O. 13694, as amended) for being responsible for or complicit in, or having engaged in, directly or indirectly, an activity described in section 1(a)(ii)(A) of E.O. 13694, as amended.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2025–01306 Filed 1–17–25; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Superfund Tax on Chemical Substances; Request to Modify List of Taxable Substances; Notice of Filing for Potassium Bicarbonate

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of filing and request for comments.

SUMMARY: This notice of filing announces that a petition has been filed requesting that potassium bicarbonate be added to the list of taxable substances. This notice of filing also requests comments on the petition. This notice of filing is not a determination that the list of taxable substances is modified.

DATES: Written comments and requests for a public hearing must be received on or before March 24, 2025.

ADDRESSES: Commenters are encouraged to submit public comments or requests for a public hearing relating to this petition electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate public docket number IRS–2025–0009 or potassium bicarbonate) by following the online instructions for submitting comments. Comments cannot be edited or withdrawn once submitted to the Federal eRulemaking Portal. Alternatively, comments and requests for a public hearing may be mailed to: Internal Revenue Service, Attn: CC:PA:01:PR (Notice of Filing for Potassium Bicarbonate), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington DC 20044. All comments received are part of the public record and subject to public disclosure. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. You should submit only information that you wish to make publicly available. If a public hearing is scheduled, notice of the time and place for the hearing will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Andrew Clark or Camille Edwards Bennehoff at (202) 317–6855 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Request to Add Substance to the List:

(a) *Overview.* A petition was filed pursuant to Rev. Proc. 2022–26 (2022–29 I.R.B. 90), as modified by Rev. Proc. 2023–20 (2023–15 I.R.B. 636), requesting that potassium bicarbonate be added to the list of taxable substances under section 4672(a) of the Internal Revenue Code (List). The petition requesting the addition of potassium bicarbonate to the List is based on weight and contains the information detailed in paragraph (b) of this document. The information is provided for public notice and comment pursuant to section 9 of Rev. Proc. 2022–26. The publication of petition information in this notice of filing is not a determination and does not constitute Treasury Department or IRS confirmation of the accuracy of the information published.

(b) *Petition Content.*

(1) *Substance name:* Potassium bicarbonate.

The substance is also known as K Bicarb or $KCHO_3$.

(2) *Petitioner:* Occidental Chemical Corporation, an exporter of potassium bicarbonate.

(3) *Proposed classification numbers:*

(i) *HTSUS number:* 2836.40.2000.

(ii) *Schedule B number:* 2836.40.0000.

(iii) *CAS number:* 298–14–6.

(4) *Petition filing dates:*

(i) *Petition filing date for purposes of making a determination:* November 25, 2024.

(ii) *Petition filing date for purposes of section 11.02 of Rev. Proc. 2022–26, as modified by section 3 of Rev. Proc. 2023–20:* July 1, 2022.

(5) *Description from petition:* Potassium bicarbonate, a solid (powder), is used in cattle feed supplements and glass manufacture. It is also used as a food additive and can be a pharma-ingredient.

Potassium bicarbonate is made from potassium hydroxide. Taxable chemicals constitute 56.04 percent by weight of the materials used to produce this substance.

(6) *Process identified in petition as predominant method of production of substance:* The predominant process for manufacture of potassium bicarbonate is absorption of CO_2 with potassium hydroxide. The predominant process for carbonate manufacture is absorption of CO_2 with alkaline liquid. This substance is produced as a pure component, not a mixture.

(7) *Stoichiometric material consumption equation, based on process identified as predominant method of production:*

CO_2 (carbon dioxide) + KOH (potassium hydroxide) → $HKCO_3$ (potassium bicarbonate)

(8) *Tax rate calculated by Petitioner, based on Petitioner's conversion factors for taxable chemicals used in production of substance:*

(i) *Tax rate:* $0.25 per ton.

(ii) *Conversion factors:* 0.56 for Potassium hydroxide.

(9) *Public docket number:* IRS–2025–0009.

Michael Beker,

Senior Counsel (Energy, Credits, and Excise Tax), IRS Office of Chief Counsel.

[FR Doc. 2025–01372 Filed 1–17–25; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Superfund Tax on Chemical Substances; Request To Modify List of Taxable Substances; Notice of Filing for Cyanuric Acid

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of filing and request for comments.

SUMMARY: This notice of filing announces that a petition has been filed requesting that cyanuric acid be added to the list of taxable substances. This notice of filing also requests comments on the petition. This notice of filing is not a determination that the list of taxable substances is modified.

DATES: Written comments and requests for a public hearing must be received on or before March 24, 2025.

ADDRESSES: Commenters are encouraged to submit public comments or requests for a public hearing relating to this petition electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate public docket number IRS–2025–0008 or cyanuric acid) by following the online instructions for submitting comments. Comments cannot be edited or withdrawn once submitted to the Federal eRulemaking Portal. Alternatively, comments and requests for a public hearing may be mailed to: Internal Revenue Service, Attn: CC:PA:01:PR (Notice of Filing for Cyanuric Acid), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington DC 20044. All comments received are part of the public record and subject to public disclosure. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. You should submit only information that you wish to make publicly available. If a public hearing is scheduled, notice of the time and place for the hearing will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Andrew Clark or Camille Edwards Bennehoff at (202) 317–6855 (not a toll-free number).

Request To Add Substance to the List

(a) *Overview.* A petition was filed pursuant to Rev. Proc. 2022–26 (2022–29 I.R.B. 90), as modified by Rev. Proc. 2023–20 (2023–15 I.R.B. 636), requesting that cyanuric acid be added to the list of taxable substances under section 4672(a) of the Internal Revenue Code (List). The petition requesting the addition of cyanuric acid to the List is based on weight and contains the information detailed in paragraph (b) of this document. The information is provided for public notice and comment pursuant to section 9 of Rev. Proc. 2022–26. The publication of petition information in this notice of filing is not a determination and does not constitute Treasury Department or IRS confirmation of the accuracy of the information published.

(b) *Petition Content.*

(1) *Substance name:* Cyanuric acid

The substance is also known as 1,3,5-Triazinane-2,4,6-trione, CYA, or $C_3N_3O_3H_3$.

(2) *Petitioner:* Occidental Chemical Corporation, an interested person in cyanuric acid

(3) *Proposed classification numbers:*

(i) *HTSUS number:* 2933.69.6050

(ii) *Schedule B number:* 2933.69.0000

(iii) *CAS number:* 108–80–5

(4) *Petition filing dates:*

(i) *Petition filing date for purposes of making a determination:* November 25, 2024.

(ii) *Petition filing date for purposes of section 11.02 of Rev. Proc. 2022–26, as modified by section 3 of Rev. Proc. 2023–20:* October 1, 2024

(5) *Description from petition:* Cyanuric acid, a solid (powder), is an ingredient used to manufacture dichloroisocyanuric acid (dichlor) and trichloroisocyanuric acid (trichlor).

Cyanuric acid is made from ammonia. Taxable chemicals constitute 27.90 percent by weight of the materials used to produce this substance.

(6) *Process identified in petition as predominant method of production of substance:* The predominant process for the manufacture of cyanuric acid is

using urea thermal decomposition to produce cyanuric acid.

(7) *Stoichiometric material consumption equation, based on process identified as predominant method of production:*

3 NH_3 (ammonia) + 3 CO_2 (carbon dioxide) → $C_3N_3O_3H_3$ (cyanuric acid) + 3 H_2O (water)

(8) *Tax rate calculated by Petitioner, based on Petitioner's conversion factors for taxable chemicals used in production of substance:*

(i) *Tax rate:* $2.11 per ton.

(ii) *Conversion factors:* 0.40 for ammonia.

(9) *Public docket number:* IRS–2025–0008.

Michael Beker,

Senior Counsel (Energy, Credits, and Excise Tax), IRS Office of Chief Counsel.

[FR Doc. 2025–01370 Filed 1–17–25; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Superfund Tax on Chemical Substances; Request to Modify List of Taxable Substances; Notice of Filing for Potassium Carbonate

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of filing and request for comments.

SUMMARY: This notice of filing announces that a petition has been filed requesting that potassium carbonate be added to the list of taxable substances. This notice of filing also requests comments on the petition. This notice of filing is not a determination that the list of taxable substances is modified.

DATES: Written comments and requests for a public hearing must be received on or before March 24, 2025.

ADDRESSES: Commenters are encouraged to submit public comments or requests for a public hearing relating to this petition electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate public docket number IRS–2025–0010 or potassium carbonate) by following the online instructions for submitting comments. Comments cannot be edited or withdrawn once submitted to the Federal eRulemaking Portal. Alternatively, comments and requests for a public hearing may be mailed to: Internal Revenue Service, Attn: CC:PA:01:PR (Notice of Filing for Potassium Carbonate), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. All comments received are part of the public record and subject to public disclosure. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. You should submit only information that you wish to make publicly available. If a public hearing is scheduled, notice of the time and place for the hearing will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Andrew Clark or Camille Edwards Bennehoff at (202) 317–6855 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Request to Add Substance to ehe List:

(a) *Overview.* A petition was filed pursuant to Rev. Proc. 2022–26 (2022–29 I.R.B. 90), as modified by Rev. Proc. 2023–20 (2023–15 I.R.B. 636), requesting that potassium carbonate be added to the list of taxable substances under section 4672(a) of the Internal Revenue Code (List). The petition requesting the addition of potassium carbonate to the List is based on weight and contains the information detailed in paragraph (b) of this document. The information is provided for public notice and comment pursuant to section 9 of Rev. Proc. 2022–26. The publication of petition information in this notice of filing is not a determination and does not constitute Treasury Department or IRS confirmation of the accuracy of the information published.

(b) *Petition Content.*

(1) *Substance name:* Potassium carbonate.

The substance is also known as Potcarb and K_2CO_3.

(2) *Petitioner:* Occidental Chemical Corporation, an exporter of potassium carbonate.

(3) *Proposed classification numbers:*

(i) *HTSUS number:* 2836.40.10000.

(ii) *Schedule B number:* 2836.40.0000.

(iii) *CAS number:* 584–08–7.

(4) *Petition filing dates:*

(i) *Petition filing date for purposes of making a determination:* November 25, 2024.

(ii) *Petition filing date for purposes of section 11.02 of Rev. Proc. 2022–26, as modified by section 3 of Rev. Proc. 2023–20:* July 1, 2022.

(5) *Description from petition:* Potassium carbonate, a solid (powder), is used in cattle feed supplements and glass manufacture. It is also used as a food additive and can be a pharma-ingredient.

Potassium carbonate is made from potassium hydroxide. Taxable chemicals constitute 71.83 percent by weight of the materials used to produce this substance.

(6) *Process identified in petition as predominant method of production of substance:* The predominant process for manufacture of potassium carbonate is absorption of CO_2 with KOH. The predominant process for carbonate manufacture is absorption of CO_2 with alkaline liquid. This substance is produced as a pure component, not a mixture.

(7) *Stoichiometric material consumption equation, based on process identified as predominant method of production:*

CO_2 (carbon dioxide) + 2 KOH (potassium hydroxide) → K_2CO_3 (potassium carbonate) + H_2O (water)

(8) *Tax rate calculated by Petitioner, based on Petitioner's conversion factors for taxable chemicals used in production of substance:*

(i) *Tax rate:* $0.36 per ton.

(ii) *Conversion factors:* 0.81 for potassium hydroxide.

(9) *Public docket number:* IRS–2025–0010.

Michael Beker,

Senior Counsel (Energy, Credits, and Excise Tax), IRS Office of Chief Counsel.

[FR Doc. 2025–01373 Filed 1–17–25; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Superfund Tax on Chemical Substances; Request To Modify List of Taxable Substances; Notice of Filing for Sodium Chlorite

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of filing and request for comments.

SUMMARY: This notice of filing announces that a petition has been filed requesting that sodium chlorite be added to the list of taxable substances. This notice of filing also requests comments on the petition. This notice of filing is not a determination that the list of taxable substances is modified.

DATES: Written comments and requests for a public hearing must be received on or before March 24, 2025.

ADDRESSES: Commenters are encouraged to submit public comments or requests for a public hearing relating to this petition electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate public docket number IRS–2025–0011 or

sodium chlorite) by following the online instructions for submitting comments. Comments cannot be edited or withdrawn once submitted to the Federal eRulemaking Portal. Alternatively, comments and requests for a public hearing may be mailed to: Internal Revenue Service, Attn: CC:PA:01:PR (Notice of Filing for Sodium Chlorite), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. All comments received are part of the public record and subject to public disclosure. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. You should submit only information that you wish to make publicly available. If a public hearing is scheduled, notice of the time and place for the hearing will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Andrew Clark or Camille Edwards Bennehoff at (202) 317–6855 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Request To Add Substance to the List

(a) *Overview.* A petition was filed pursuant to Rev. Proc. 2022–26 (2022–29 I.R.B. 90), as modified by Rev. Proc. 2023–20 (2023–15 I.R.B. 636), requesting that sodium chlorite be added to the list of taxable substances under section 4672(a) of the Internal Revenue Code (List). The petition requesting the addition of sodium chlorite to the List is based on weight and contains the information detailed in paragraph (b) of this document. The information is provided for public notice and comment pursuant to section 9 of Rev. Proc. 2022–26. The publication of petition information in this notice of filing is not a determination and does not constitute Treasury Department or IRS confirmation of the accuracy of the information published.

(b) *Petition Content.*

(1) *Substance name:* Sodium chlorite.

This substance is also known as $NaClO_2$.

(2) *Petitioner:* Occidental Chemical Corporation, an exporter of sodium chlorite.

(3) *Proposed classification numbers:*

(i) *HTSUS number:* 2828.90.0000.

(ii) *Schedule B number:* 2828.90.0000.

(iii) *CAS number:* 7758–19–2.

(4) *Petition filing dates:*

(i) *Petition filing date for purposes of making a determination:* November 25, 2024.

(ii) *Petition filing date for purposes of section 11.02 of Rev. Proc. 2022–26, as modified by section 3 of Rev. Proc. 2023–20:* July 1, 2022.

(5) *Description from petition:* Sodium chlorite, a solid (crystals), is used in control of biological activity in potable and non-potable water applications. Additional applications include textile bleaching and disinfection of meat processing facilities.

Sodium chlorite is made from sodium hydroxide and chlorine. Taxable chemicals constitute 75.87 percent by weight of the materials used to produce this substance.

(6) *Process identified in petition as predominant method of production of substance:* The predominant process for manufacture of sodium chlorite is electrolytic production of $NaClO_3$ followed by hydrochlorination with wet acid with byproduct chlorine and hydrogen used in manufacture of acid. This substance is produced as a pure component, not a mixture, though it may be sold as an aqueous liquid.

(7) *Stoichiometric material consumption equation, based on process identified as predominant method of production:*

$2\ Cl_2$ (chlorine) + 4 NaOH (sodium hydroxide) + $3\ O_2$ (oxygen) → 4 $NaClO_2$ (sodium chlorite) + $2\ H_2O$ (water)

(8) *Tax rate calculated by Petitioner, based on Petitioner's conversion factors for taxable chemicals used in production of substance:*

(i) *Tax rate:* $2.35 per ton.

(ii) *Conversion factors:* 0.39 for chlorine, 0.44 for sodium hydroxide.

(9) *Public docket number:* IRS–2025–0011.

Michael Beker,

Senior Counsel (Energy, Credits, and Excise Tax), IRS Office of Chief Counsel.

[FR Doc. 2025–01371 Filed 1–17–25; 8:45 am]

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DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Internal Revenue Service (IRS) Information Collection Request

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before February 20, 2025 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: IRS Governmental Liaison (GL) Data Exchange Request.

OMB Number: 1545–NEW.

Form Number: Form 15426.

Abstract: Form 15426 is an initial intake form used to establish a collaboration between internal IRS business units and external stakeholders before the commencement of any agreement of tax return and tax return information to be exchanged. The respondents are Federal, State, and local agencies that are voluntarily initiating a request for data from the IRS.

Current Actions: There is a new information collection.

Type of Review: New collection.

Affected Public: Federal, State, and local agencies.

Estimated Number of Responses: 15.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 15.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2025–01359 Filed 1–17–25; 8:45 am]

BILLING CODE 4830–01–P



FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Parts 202, 232, 240, et al.
Electronic Submission of Certain Materials Under the Securities Exchange Act of 1934; Amendments Regarding the FOCUS Report; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202, 232, 240, 249, and 249b

[Release Nos. 33–11342; 34–101925; IC–35420; File No. S7–08–23]

RIN 3235–AL85

Electronic Submission of Certain Materials Under the Securities Exchange Act of 1934; Amendments Regarding the FOCUS Report

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is amending its rules to require electronic filing or submission of certain forms and other filings or submissions that are required to be filed with or submitted to the Commission under the Securities Exchange Act of 1934 (''Exchange Act'') and the rules and regulations under the Exchange Act. The amendments require the electronic filing or submission on the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system, using structured data where appropriate, for certain forms filed or submitted by self-regulatory organizations (''SROs''). The amendments require the information currently contained in Form 19b–4(e) to be publicly posted on the SRO's website and remove the manual signature requirements for SRO proposed rule change filings. The Commission is also requiring that a clearing agency post supplemental material to its website. In addition, the Commission is amending rules under the Exchange Act and the Securities Act of 1933 (''Securities Act'') to require the electronic filing or submission on EDGAR, using structured data where appropriate, of certain forms, reports, and notices provided by broker-dealers, security-based swap dealers, and major security-based swap participants. The amendments also require withdrawal in certain circumstances of notices filed in connection with an exception to counting certain dealing transactions toward determining whether a person is a security-based swap dealer. Finally, the Commission is allowing electronic signatures in certain broker-dealer filings, and amending the Financial and Operational Combined Uniform Single Report (''FOCUS Report'') to harmonize with other rules, make technical corrections, and provide clarifications.

DATES:

Effective date: March 24, 2025.

Compliance dates: The compliance dates for the rule amendments are discussed in section VIII of this release.

FOR FURTHER INFORMATION CONTACT: For Form 1—Justin Pica, Assistant Director, and David Remus, Special Counsel; for Form 1–N—David Dimitrious, Senior Special Counsel, and Michou Nguyen, Special Counsel; for Form 15A—Molly Kim, Assistant Director, and David Michehl, Special Counsel; for Form CA–1—Matthew Lee, Assistant Director, and Claire Noakes, Senior Special Counsel; for Form 19b–4(e) and technical amendment to Form 19b–4—Cristie March, Senior Special Counsel, and Edward Cho, Special Counsel; for Rule 17a–22—Matthew Lee, Assistant Director, and Susan Petersen, Special Counsel; for Rule 17a–5, Rule 17a–12, Rule 18a–7, Form X–17A–5 Part III and related annual filings, Form X–17A–5 Parts II, IIA, and IIC, Form 17–H, and Form X–17A–19—Raymond A. Lombardo, Assistant Director, and Valentina Minak Deng, Special Counsel; for notices provided pursuant to Rule 3a71–3(d)(1)(vi) and Rule 15fi–3(c)—Carol McGee, Associate Director; John Guidroz, Assistant Director, and Israel Goodman, Senior Counsel; and for reports submitted pursuant to Rule 15fk–1(c)(2)(ii)(A), Kelly Shoop, Branch Chief, and Patrick Bloomstine, Attorney-Adviser, Division of Trading and Markets, at (202) 551–5500, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is amending its rules to require the electronic filing or submission, using structured data where appropriate, of certain forms and other filings,[1] which are currently filed with or submitted to the Commission in paper or via email or are new filing requirements. This release is divided into five parts: (1) forms that are filed or submitted by or otherwise made available electronically by SROs (''Covered SRO Forms''); (2) supplementary materials (''Covered Supplementary Materials'') required to be posted on the internet websites of clearing agencies; (3) forms and related filings filed or submitted by broker-dealers and over-the-counter derivatives dealers (''OTC derivatives dealers''), as well as security-based swap dealers (''SBSDs'') and major security-based swap participants (''MSBSPs'') (each SBSD and each MSBSP also referred to as an ''SBS Entity'' and together referred to as ''SBS Entities''); (4) other notices, filings, and reports consisting of (a) Form X–17A–19; (b) 17 CFR 240.3a71–3(d)(1)(vi) (''Rule 3a71–3(d)(1)(vi)'') Notices; (c) 17 CFR 240.15Fi–3(c) (''Rule 15fi–3(c)'') Notices; and (d) 17 CFR 240.15Fk–1(c)(2)(ii)(A) (''Rule 15fk–1(c)(2)(ii)(A)'') Compliance Reports; and (5) amendments regarding the FOCUS Report, that, among other things, would modernize signature requirements in Exchange Act Rules 17a–5, 17a–12, and 18a–7.[2] The Commission is adopting amendments to or relating to the following rules:

[1] For purposes of this release, the term ''form'' means any Commission-created document labeled as a ''Form'' that is required to be submitted or filed electronically, and the term ''filing'' means any form, notice, report, or material required to be submitted or filed electronically or required to be posted on an internet website in lieu of being submitted or filed.

[2] The Commission's release also includes amendments to CFR designations in order to ensure regulatory text conforms more consistently with section 2.13 of the Document Drafting Handbook. *See* Office of the Federal Register, Document Drafting Handbook (Aug. 2018 Edition, Revision 2.1, dated Oct. 2023), *available at https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf*. For rules being amended in this release that contain an uppercase letter in their CFR citations (other than temporary rules like 17 CFR 240.17h–2T), the Commission is amending their CFR section designations to replace each such uppercase letter with the corresponding lowercase letter, and, in one case, to also redesignate the rule numbering. For example, 17 CFR 240.15Fi–3 is being redesignated as 17 CFR 240.15fi–3, 17 CFR 240.15Fk–1 is being redesignated as 17 CFR 240.15fk–1, 17 CFR 240.15Aa–1 is being redesignated as 17 CFR 240.15aa–1, and 17 CFR 240.15Aj–1 is being redesignated as 17 CFR 240.15aa–2.

Commission Reference		CFR Citation (17 CFR)
Administrative Practice and Procedure, Securities	Rule 202.3	§ 202.3
Securities Act of 1933 ("Securities Act")[3]		
Regulation S-T	Rule 100	§ 232.100
	Rule 101	§ 232.101
	Rule 201	§ 232.201
	Rule 202	§ 232.202
	Rule 405	§ 232.405
Securities Exchange Act of 1934 ("Exchange Act")[4]		
	Rule 3a71-3	§ 240.3a71-3
	Rule 6a-1	§ 240.6a-1
	Rule 6a-2	§ 240.6a-2
	Rule 6a-3	§ 240.6a-3
	Rule 6a-4	§ 240.6a-4
	Rule 15aa-1	§ 240.15aa-1
	Rule 15aa-2	§ 240.15aa-2
	Rule 15fi-3	§ 240.15fi-3
	Rule 15fk-1	§ 240.15fk-1
	Rule 17a-5	§ 240.17a-5
	Rule 17a-12	§ 240.17a-12
	Rule 17a-19	§ 240.17a-19
	Rule 17a-22--	§ 240.17a-22
	Rule 17ab2-1	§ 240.17ab2-1
	Rule 17h-2T	§ 240.17h-2T
	Rule 18a-7	§ 240.18a-7
	Rule 19b-4	§ 240.19b-4
	Rule 24b-2	§ 240.24b-2
	Form 1	§ 249.1
	Form 1-N	§ 249.10
	Form CA-1	§ 249.200
	Form 17-H	§ 249.328T
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	Form X-17A-5 Part IIC	§ 249.617
	Form X-17A-5 Part III	§ 249.617
	Form X-17A-19	§ 249.635
	Form X-15AA-1	§ 249.801
	Form 15A	§ 249.801 (as amended)
	Form 19b-4	§ 249.819

Finally, the Commission is rescinding:

[3] *See* 15 U.S.C. 77a through 77mm.

[4] *See* 15 U.S.C. 78a through 78qq.

Commission Reference		CFR Citation (17 CFR)
Exchange Act	Form X-15AJ-1	§ 249.802
	Form X-15AJ-2	§ 249.803
	Form 19b-4(e)	§ 249.820

In developing this release with regard to SBS Entities, the Commission has consulted and coordinated with the CFTC and the prudential regulators in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[5]

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[5] *See* Public Law 111–203, 124 Stat. 1376 (2010). Section 712(a)(2) of the Dodd-Frank Act provides in part that the Commission shall ''consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.''

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I. Introduction

A. Experience With Targeted Regulatory Assistance During the COVID–19 Pandemic

As part of its response to the COVID–19 pandemic, the Commission and its staff provided assistance and regulatory relief to market participants, as appropriate, to facilitate the continued orderly and fair functioning of the securities markets.[6] As part of these efforts, Division of Trading and Markets (''Division'') staff issued a statement providing that the staff would not recommend enforcement action if filers and registrants made alternative arrangements, as detailed in the statement, for delivery, execution, and notarization of certain paper filings.[7] More specifically, the staff stated that it would not recommend that the Commission take enforcement action with respect to any failure to comply with the paper format submission requirement or manual signature requirement of certain ''Impacted Paper Submissions'' (as defined in the Updated Staff Statement), which included, but were not limited to, broker-dealer audited annual reports, Form 1 filings for national securities exchanges, and Form CA–1 filings for clearing agencies.

In general, electronic filing of Impacted Paper Submissions has been practical and efficient. It also has been the Commission's experience that electronic filing has been positively received by the various registrants that have used it. Based in part on these positive experiences with electronic filing during the COVID–19 pandemic, and as part of its efforts to modernize the methods by which it collects and analyzes information from registrants, the Commission proposed to amend certain rules and forms to require that a number of the filings be submitted to the Commission electronically on EDGAR using structured data where appropriate.[8] The Commission received comment letters in response to the Proposing Release[9] and, as set forth in more detail below, is adopting the proposed amendments with certain modifications in response to comments.

B. Covered SRO Forms

The Commission is requiring, as proposed, that the following forms be filed electronically on EDGAR:

[6] *See generally, e.g.,* An Update on the Commission's Targeted Regulatory Relief to Assist Market Participants Affected by COVID–19 and Ensure the Orderly Function of our Markets (public statement by Chairman Jay Clayton, William Hinman, Director, Division of Corporation Finance, Dalia Blass, Director, Division of Investment Management, Brett Redfearn, Director, Division of Trading and Markets (Jan. 26, 2020, updated Jan. 5, 2021)), *available at https://www.sec.gov/news/public-statement/update-commissions-targeted-regulatory-relief-assist-market-participants*.

[7] *See generally* Division Updated Staff Statement Regarding Certain Paper Submissions in Light of COVID–19 Concerns (''Updated Staff Statement''), *available at https://www.sec.gov/tm/paper-submission-requirements-covid-19-updates-061820*. Staff reports, Investor Bulletins, and other staff documents cited in this release represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these documents and, like all staff statements, they have no legal force or effect, do not alter applicable law, and create no new or additional obligations for any person.

[8] *See Electronic Submission of Certain Materials Under the Securities Exchange Act of 1934; Amendments Regarding the FOCUS Report;* Exchange Act Release No. 97182 (Mar. 22, 2023), 88 FR 23920 (Apr. 18, 2023) (''Proposing Release'').

[9] The comments on the Proposing Release (File No. S7–08–23) are available at *https://www.sec.gov/comments/s7-08-23/s70823.htm*.

Form	Filer Type	Amendments
Form 1: Application for, and Amendments to Application for, Registration as a National Securities Exchange or Exemption from Registration pursuant to section 5 of the Exchange Act	Exchange	Amend 17 CFR 249.1, including the form and instructions to the form, and 17 CFR 240.6a-1, 17 CFR 240.6a-2, and 17 CFR 240.6a-3 under the Exchange Act.
Form 1-N: Form and Amendments for Notice of Registration as a National Securities Exchange for the Sole Purpose of Trading Security Future Products Pursuant to section 6(g) of the Exchange Act	Exchange	Amend 17 CFR 249.10, including the form and instructions to the form, and 17 CFR 240.6a-4 under the Exchange Act.
Form X-15AA-1: Application for Registration as a National Securities Association or Affiliated Securities Association, Form X-15AJ-1: Amendatory and/or Supplementary Statements to Registration Statement of a National Securities Association or an Affiliated Securities Association, and Form X-15AJ-2: Annual Consolidated Supplement of a National Securities Association or an Affiliated Securities Association	Securities Association	Form X-15AA-1 (re-numbered as Form 15A) and the instructions to the form, and corresponding Exchange Act Rule 15Aa-1 (redesignated as Rule 15aa-1). Forms X-15AJ-1 and X-15AJ-2 (repealed and the information requirements incorporated into new Form 15A),[10] and corresponding Exchange Act Rule 15Aj-1 (renumbered as Rule 15aa-2).
Form CA-1: Application for Registration or for Exemption from Registration as a Clearing Agency and for Amendment to Registration Pursuant to the Exchange Act	Clearing Agency	The form and instructions to the form, and corresponding Exchange Act Rule 17ab2-1.

Prior to these amendments, the Commission's regulatory framework required an entity seeking to be registered as a national securities exchange (or seeking an exemption from such registration based on limited volume), a national securities association, a clearing agency (or seeking an exemption from such registration), and a national securities exchange solely for the purpose of trading futures on individual stocks or on narrow-based stock indexes [11] (''Security Futures Product Exchange'') to file, in a paper-based format, certain forms that are mandated by rules under the Exchange Act. Registered national securities exchanges, registered national securities associations, registered clearing agencies, and registered Security Futures Product Exchanges (collectively, SROs), as well as exempt exchanges and exempt clearing agencies (together with prospective SROs, ''Filers''), were also required to submit paper-based amendments to their respective forms. The Commission's amendments modernize the filing process for these various forms by requiring that the forms and information contained therein be submitted to the Commission electronically, thereby removing the burden of preparing and submitting paper forms by the Filers, and of receiving, acting upon, and maintaining the paper forms by the Commission and its staff.

In particular, as required by Rule 6a–1, Rule 6a–2, and Rule 6a–3 under the Exchange Act, a prospective exchange must file on Form 1 an application for registration as a national securities exchange (or for an exemption from the requirement to register as a national securities exchange based on limited volume), and, once registered, the exchange must file as an amendment to its Form 1 certain updating information, as well as certain supplemental material and reports. In addition, as required by Rule 6a–4 under the Exchange Act, a

[10] *See* 17 CFR 249.802 and 803. The forms and instructions to the form are incorporated by reference into the Code of Federal Regulations.

[11] Futures on individual stocks or on narrow-based stock indexes are hereinafter referred to as ''security futures products.''

prospective exchange may register as a Security Futures Product Exchange by filing Form 1–N (''notice registration'') if it satisfies certain prerequisites and must file amendments to its initial filing and certain supplemental materials on Form 1–N as well. An applicant for registration as a national securities association must file a registration statement with the Commission on Form X–15AA–1, and every association applying for registration or registered as a national securities association must file amendments and supplements to its registration statement with the Commission on Form X–15AJ–1 and annual supplements to its registration statement with the Commission on Form X–15AJ–2. Moreover, as required by Rule 17ab2–1 under the Exchange Act, a prospective clearing agency must file on Form CA–1 an application for registration as a clearing agency (or for an exemption from such registration), and both registered and exempt clearing agencies must file amendments to their Form CA–1 as necessary. In each of the foregoing situations, these forms were required to be submitted to the Commission in a paper-based format. As a result, the prospective and existing SROs, exempt exchanges, and exempt clearing agencies have incurred the costs of completing their respective paper-based forms, making the requisite number of copies, and submitting the original version and copies to the Commission.

The Commission also is rescinding the following form, as proposed, and instead requiring that the information currently contained in the form be publicly posted on the relevant SRO's internet website:

Form	Filer Type	Amendment
Form 19b-4(e): Information Required of a Self-Regulatory Organization Listing and Trading a New Derivative Securities Product Pursuant to Rule 19b-4(e) Under the Exchange Act	SRO	Rescind the form and instructions to the form and amend 17 CFR 240.19b-4(e) (''Rule 19b-4(e)'').

Previously, Rule 19b–4(e) under the Exchange Act required an SRO to submit to the Commission reports regarding the listing and trading of new derivative securities products on Form 19b–4(e) in a paper-based format. As with the forms discussed above in this section, SROs incurred the costs of completing the paper-based form, making the requisite number of copies, and submitting the original version and copies to the Commission.

C. Covered Supplementary Materials

Rule 17a–22 requires a registered clearing agency to file with the Commission three copies of any material within 10 days after issuing, or making generally available, such materials to its participants or to other entities with whom it has a significant relationship.[12] A registered clearing agency for which the Commission is not the appropriate regulatory agency is required at the same time to file one copy of such material with its ''appropriate regulatory agency'' (''ARA'').[13] While the rule continues to support the Commission's oversight of clearing agencies, the rule is being modernized to better reflect the ways in which the registered clearing agencies now generally distribute the supplemental materials required under the rule, as discussed further below.

Since the Commission adopted Rule 17a–22 in 1980, technology has evolved significantly and the internet has played an increasingly vital role in information distribution.[14] During this period, the Commission has encouraged the dissemination of information electronically via the internet, as well as through the use of automated systems and other services provided by clearing agencies.[15] In general, transitioning from a requirement to file paper with the Commission to an electronic filing requirement can help improve efficiency and transparency in the securities markets for registered clearing agencies, their participants, and the general public. Most recently, under the Updated Staff Statement described above,[16] registered clearing agencies have established alternate arrangements to satisfy the requirements of Rule 17a–22 that do not require the submission of paper filings.

The Commission is now amending Rule 17a–22 to eliminate the paper filing requirement altogether and require a registered clearing agency to post any supplementary materials to its internet website, as discussed further below.[17] The amended rule increases efficiency in the distribution of supplementary materials required under the rule and promotes transparency regarding their contents, as these supplementary materials are intended to be made generally available to participants in the clearing agency or other categories of market participants with whom the clearing agency has a significant relationship.

D. Filings by Broker-Dealers, OTC Derivatives Dealers, SBSDs, and MSBSPs

[12] *See* 17 CFR 240.17a–22. Such materials are hereinafter referred to as ''supplementary materials.''

[13] *See id.* When used with respect to a clearing agency, the term ''appropriate regulatory authority'' is defined under section 3(a)(34)(B) of the Exchange Act to mean broadly the Comptroller of the Currency, the Board of Governors of the Federal Reserve System (''Federal Reserve''), or the Federal Deposit Insurance Corporation, depending on the type of bank that is acting as a registered clearing agency. *See* 15 U.S.C. 78c(a)(34).

[14] *See, e.g.,* The Impact of Recent Technological Advances on the Securities Market (Sept. 1997), *available at https://www.sec.gov/news/studies/techrp97.htm.* In this report, the Commission stated that it was mindful of the benefits of increasing use of new technologies, such as the internet, to access information more efficiently.

[15] *Id. See also, e.g.,* Commission Interpretation: Confirmation and Affirmation of Securities Trades; Matching, Exchange Act Release No. 39829 (Apr. 6, 1998), 63 FR 17943 (Apr. 18, 1998), available *at https://www.sec.gov/rule-release/34-39829*; Commission Interpretation: Use of Electronic Media, Exchange Act Release No. 42728 (Apr. 28, 2000), 65 FR 25843 (May 4, 2000), *available at https://www.sec.gov/rules/interp/34-42728.htm*; Press Release: SEC Provides Guidance to Open Up Use of Corporate websites for Disclosures to Investors (July 30, 2008), *available at https://www.sec.gov/news/press/2008/2008-158.htm.*

[16] *See supra* note 7.

[17] *See generally infra* section III.

Form	Filer Type	Amendment
Form X-17A-5 Part III: Information Required Pursuant to Rules 17a-5, 17a-12, and 18a-7 under the Exchange Act	Broker-Dealer, Security-Based Swap Dealer, Major Security-Based Swap Participant	Require the form to be filed on EDGAR.
Form 17-H: Risk Assessment Report for Brokers and Dealers	Broker-Dealer	Require the form to be filed on EDGAR.

Certain forms and other filings that the Commission is requiring to be filed on EDGAR by broker-dealers, OTC derivatives dealers, SBSDs, and MSBSPs are appropriate for electronic filing because many of them are voluminous (in number, size, or both) and some of them contain certain information that must be disclosed publicly.[18] Electronic conversion and/or publication of these filings by Commission staff, to make them available to the public and/or Commission staff, can be labor intensive and time consuming. Requiring submission of these filings on the Commission's established EDGAR filing system will facilitate more efficient transmission, analysis, dissemination, storage, and retrieval of information, and will benefit the Commission, the submitting entities, investors, and other market participants.

The Commission is requiring the existing EDGAR system to be used for certain filings because Form X–17A–5 Part III and Form 17–H are already permitted to be filed on EDGAR. In turn, this will minimize the burden of transitioning to mandatory filing on EDGAR.

E. Other Forms, Reports, or Notices

[18] *See generally infra* section IV.

Form, Report or Notice	Filer/Submitter Type	Amendment
Form 17a-19: Information Required of National Securities Exchanges and Registered National Securities Associations Pursuant to Section 17 and 19 of the Securities Exchange Act of 1934 and Rule 17a-19 Thereunder, Report of Change in Membership Status	National securities exchanges, national securities associations	Require the form to be filed on EDGAR.
Notices (and any withdrawals of notices) filed pursuant to Rule 3a71-3(d)(1)(vi)	Certain registered SBSDs or registered brokers that meet certain capital and other requirements	Require the notices and withdrawals to be filed on EDGAR; require withdrawal in specified circumstances.
Notices (and any amendments to the notices) of Security-Based Swap Valuation Disputes pursuant to Rule 15fi-3(c)	SBS Entities	Require the notices (and any amendments to the notices) to the Commission to be submitted on EDGAR using structured data; specify that notices (including amendments) required to be provided to any applicable prudential regulator be in a form and manner acceptable to such prudential regulator.
Compliance Reports Submitted to the Commission pursuant to Rule 15fk-1(c)(2)(ii)(A)	SBS Entities	Require reports to be submitted on EDGAR in a structured data language (Inline eXtensible Business Reporting Language (“Inline XBRL”)).

The Commission is adopting amendments requiring the EDGAR system to be used for the following notices, reports, and filings: (1) notices made pursuant to Rule 17a–19 under the Exchange Act and on accompanying Form X–17A–19; (2) notices made pursuant to Rule 3a71–3(d)(1)(vi); (3) notices made to the Commission pursuant to Rule 15fi–3(c); and (4) reports made pursuant to Rule 15fk–1(c)(2)(ii)(A) under the Exchange Act. Previously, the notices made pursuant to Rule 17a–19 under the Exchange Act and on accompanying Form X–17A–19 were submitted via paper.[19] The notices made pursuant to Rule 3a71–3(d)(1)(vi) were previously filed via email.[20] The notices made to the Commission pursuant to Rule 15fi–3(c) were previously submitted either via email or EDGAR, at the SBS Entity’s option, and the reports required under Rule 15fk–1(c)(2)(ii)(A) were previously submitted via email, mail, or EDGAR, at the SBS Entity’s option.[21]

F. Structured Data Requirements

The Commission is requiring, as proposed, certain of the disclosures required by the following filings to be provided in a structured, machine-readable data language: (1) the Covered SRO Forms; (2) the information required under Rule 19b–4(e); (3) Form X–17A–19; (4) the annual reports (and related annual filings) filed by broker-dealers (including OTC derivatives dealers) and

[19] *See infra* section V.A.

[20] *See infra* section V.B.

[21] *See infra* section V.C. and V.D. Rule 15fi–3(c) requires that SBS Entities ‘‘*notify* the Commission’’ (emphasis added). *See infra* section V.C.1. Requiring these notices and amendments to be submitted to the Commission via EDGAR does not cause them to be deemed filed for purposes of the Exchange Act. *See, e.g.,* 15 U.S. Code 78r. 17 CFR 240.15fk–1(c) (‘‘Rule 15fk–1(c)’’) requires that the chief compliance officer of an SBS Entity prepare and sign an annual compliance report that ‘‘shall [b]e submitted to the Commission.’’ 17 CFR 240.15fk–1(c) (emphasis added). Requiring these reports to be submitted via EDGAR does not cause the report to be deemed filed for purposes of the Exchange Act.

SBS Entities on Form X–17A–5 Part III; (5) the risk assessment reports filed by certain broker-dealers on Form 17–H; and (6) the notices and reports provided to the Commission by SBS Entities under Exchange Act Rules 15fi–3(c) and 15fk–1(c)(2)(ii)(A), respectively (together, the ''Structured Documents'').[22]

Specifically, the Commission is requiring, as proposed, the report required by Exchange Act Rule 15fk–1(c)(2)(ii)(A) and portions of Form 1, Form CA–1, Form 17–H, and Form X–17A–5 Part III and related annual filings to be provided in the Inline XBRL structured data language. The Commission is also requiring, as proposed, Form X–17A–19, the notice to the Commission (and any amendments to the notices) required by Exchange Act Rule 15fi–3(c), and portions of Form 1–N, Form 15A, Form 1, Form CA–1, Form 17–H, and Form X–17A–5 Part III and related annual filings to be provided in machine-readable, eXtensible Markup Language (''XML'')-based data languages specific to those documents (''custom XMLs''). As proposed, these structured documents will be filed or submitted, as appropriate to each document, on EDGAR.[23]

In addition, the Commission is requiring, as proposed, SROs to electronically post the information required under Rule 19b–4(e) using a custom XML-based data language (also referred to as a ''schema'') that the Commission will create and publish on its website for SROs to use.[24] The Commission is also requiring, as proposed, SROs to post a rendered Portable Document Format (''PDF'') version of the custom XML document using a PDF renderer that the Commission will also create and publish on its website for SROs to use.[25]

As discussed in further detail below, the structured data requirements will facilitate access to the disclosures by users (*e.g.,* investors, market participants, analysts, and the Commission), enabling more efficient retrieval, aggregation, and comparison across different filers and time periods, as compared to an unstructured PDF, HyperText Markup Language (''HTML''), or American Standard Code for Information Interchange (''ASCII'') requirement.[26]

The Commission is requiring, as proposed, some disclosures to be structured in Inline XBRL and other disclosures to be structured in custom XML. While Inline XBRL is well-suited for certain types of content—such as financial statements and extended narrative discussions—other types of content can be readily captured using custom XML data languages that yield smaller file sizes than Inline XBRL and thus facilitate more streamlined data processing. Such custom XML languages also enable EDGAR to generate fillable web forms that permit affected entities to input disclosures into form fields rather than encode their disclosures in custom XML themselves, thus easing compliance burdens on affected entities.[27] Finally, certain of the structured documents—Form X–17A–5 Part III and Form 17–H—were previously partially subject to custom XML structured data requirements when voluntarily filed on EDGAR. For these forms, the Commission is requiring, as proposed, the same custom XML requirements to minimize the associated burdens on registrants that were previously using these languages for these forms.

One commenter stated that the Commission ''should make clear that the [Proposing Release] would not modify the content and format of reports that substituted compliance firms are required to submit.'' [28] The Commission's orders granting substituted compliance (''substituted compliance orders'') [29] condition substituted compliance for the requirements of certain Exchange Act rules in part on a non-U.S. SBS Entity providing information to the Commission, including reports and other information required by foreign law. The substituted compliance orders do not, however, address how an SBS Entity relying on substituted compliance should provide such information to the Commission (*e.g.,* via EDGAR or in structured data format).[30] Rather, the Commission's website provides information regarding submitting notices and amendments under Rule 15fi–3(c) [31] and the annual report required by Rule 15fk–1(c) [32] as well as filing with the Commission annual audited reports required under local law when applying substituted compliance with respect to paragraph (c) of Rule 18a–7.[33] Prior to the amendments adopted in this release, SBS Entities have been using this information on the Commission's website when providing filings and submissions required under the relevant Exchange Act rules and substituted compliance orders. Therefore, the amendments requiring submission or filing on EDGAR or in structured data

[22] For certain affected documents, as proposed, only some aspects are required to be provided in a structured data language. For example, only the execution pages of Form 1–N and Form 15A are required to be provided in a structured data language. *See infra* section VII.A.

[23] The details of the structured data requirements, including the specific portions of affected documents that will be structured in Inline XBRL versus custom XML, are discussed in section VII.A below.

[24] This requirement will mirror the existing requirement for registered broker-dealers to electronically post reports containing order routing information using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website. *See* 17 CFR 242.606. The custom XML schema and PDF renderer for Rule 606 reports are *available at https://www.sec.gov/structureddata/dera_taxonomies.*

[25] *See id.*

[26] *See infra* sections VII.A and X.C.

[27] *See infra* section X.E.3 (discussing and responding to one commenter's statement that XBRL should be used for all Structured Documents).

[28] *See* Letter from Kyle Brandon, Managing Director and Head of Derivatives Policy, Securities Industry and Financial Markets Association (May 22, 2023) (''SIFMA 5/22/2023 Letter'') at 3. *See also* SIFMA 5/22/2023 Letter at 7. Exchange Act Rule 3a71–6 (17 CFR 240.3a71–6) provides a framework whereby non-U.S. SBS Entities may satisfy certain requirements under Exchange Act section 15F by complying with comparable regulatory requirements of a foreign jurisdiction. Because substituted compliance does not constitute exemptive relief, but instead provides an alternative method by which non-U.S. SBS Entities may comply with applicable Exchange Act requirements, the non-U.S. SBS Entities remain subject to section 15F and the rules thereunder. *See, e.g.,* Amended and Restated Order Granting Conditional Substituted Compliance in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-based Swap Participants Subject to Regulation in the Federal Republic of Germany; Amended Orders Addressing Non-U.S. Security-Based Swap Entities Subject to Regulation in the French Republic or the United Kingdom; and Order Extending the Time To Meet Certain Conditions Relating to Capital and Margin, Exchange Act Release No. 93411 (Oct. 22, 2021), 86 FR 59797, 59798 (Oct. 28, 2021).

[29] The Commission's current substituted compliance orders are available on the Commission's website at *https://www.sec.gov/tm/Jurisdiction-Specific-Apps-Orders-and-MOU.*

[30] To the extent the substituted compliance orders include a requirement regarding the manner or format of reports or information to be provided to the Commission, the substituted compliance orders only require that the report or information should be provided to the Commission in (1) the manner specified on the Commission's website; or (2) in the manner and format required by Commission rule or order. Either way, the specific manner or format for such reports and information to be delivered to the Commission is outside of the substituted compliance orders.

[31] *See* Staff Statement on Submitting Security-Based Swap Valuation Dispute Notices (available at *https://www.sec.gov/tm/Security-Based-Swap-Valuation-Dispute-Notices*).

[32] *See* Frequently Asked Questions Regarding Chief Compliance Officer Annual Reports Submitted by Security-Based Swap Dealers and Major Security-Based Swap Participants (available at *https://www.sec.gov/tm/faqs-cco-annual-reports-sbsd*).

[33] *See* Staff Statement on Submitting Notices, Statements, Applications, and Reports for Security-Based Swap Dealers and Major Security-Based Swap Participants Pursuant to the Financial Responsibility Rules (Exchange Act Rules 18a–1 through 18a–10) (available at *https://www.sec.gov/tm/staff-statement-on-submissions*).

format do not modify the terms of the substituted compliance orders and eligible SBS Entities may continue to rely on existing substituted compliance orders regarding the requirements of a relevant rule. However, the instructions on the Commission's website regarding the submission or filing of reports and other information that SBS Entities provide to the Commission pursuant to a substituted compliance order will be updated to specify how an SBS Entity must provide such information to the Commission in a manner consistent with the electronic filing and submission and structured data amendments being made in this release. This release does not change the substituted compliance orders.[34]

Certain Structured Documents also include requirements to attach copies of existing documents, such as copies of bylaws, written agreements, user manuals, and listing applications. The Commission is requiring, as proposed, affected entities to file these copies of documents as unstructured PDF attachments to the otherwise structured forms. Requiring affected entities to retroactively structure such existing documents, which were prepared for purposes outside of fulfilling the Commission's disclosure requirements, would have imposed compliance burdens on affected entities that would not have been justified in light of the informational benefits that would have arisen from having such documents in structured form.[35]

Similarly, Forms 1–N and 15A (other than the cover pages—*i.e.,* execution pages—of those Forms) are, as proposed, not subject to structured data requirements, given that the very limited number of Form 1–N and Form 15A filers and filings limits the benefit that would have accrued from machine-readability of the disclosures contained therein.[36] Notices filed pursuant to Rule 3a71–3(d)(1)(vi) (''ANE Exception Notices'') also are not subject to structured data requirements, as the very limited number of data points in such notices would have lessened the utility of any functionality enabled by structured data (such as efficient retrieval of individual data points from structured documents).[37]

The Commission received several comments regarding the structured data requirements for the Structured Documents.[38] These included comments related to structured data requirements for specific filings or submissions, comments related to structured data requirements more generally, comments related to the particular structured data languages specified for the Structured Documents, and comments related to the costs, benefits, and burdens arising from the structured data requirements.[39] Each of these comments is discussed subsequently in the appropriate subsection or subsections of the release.[40]

G. Amendments Regarding the FOCUS Report and Signature Requirements in Rule 17a–5, 17a–12, and 18a–7 Filings

Finally, the Commission is adopting amendments regarding the FOCUS Report to harmonize with other rules, make technical changes, and provide clarifications. In addition, the Commission is adopting amendments to allow electronic signatures in Rule 17a–5, 17a–12, and 18a–7 filings, including the FOCUS Report.

II. Requirements to Electronically File Covered SRO Forms

The Commission is amending certain Exchange Act rules and the Covered SRO Forms, including their instructions, to eliminate the current paper copy filing method and instead require electronic submission of the Covered SRO Forms. Changing from the current method of paper filing to electronic submission of the Covered SRO Forms ultimately will increase efficiencies and decrease costs for Filers with respect to their filing obligations.[41] In addition the electronic filing of the Covered SRO Forms will facilitate the Commission's oversight of SROs by streamlining the process of tracking and reviewing the filings made on the Covered SRO Forms.

The amendments require the Covered SRO Forms to be filed on EDGAR. The Commission is requiring the use of the existing EDGAR system for the Covered SRO Forms because these filings are similar to other filings that are currently submitted on EDGAR. Furthermore, many of the Covered SRO Forms contain information that must be disclosed publicly, and electronic conversion and/or publication of these filings by Commission staff is labor intensive and time consuming. Requiring the submission of these filings on EDGAR will facilitate more efficient transmission, analysis, dissemination, storage, and retrieval of information, and will benefit the Commission, the submitting entities, investors, and other market participants. As a result of the amendments to relevant Commission rules and forms as described below, any Filer of the Covered SRO Forms who has not previously made an electronic filing on EDGAR will need to apply for EDGAR access pursuant to the EDGAR Filer Manual[42] in order to file documents on EDGAR.[43]

For each of the Covered SRO Forms, the Commission is adding technical requirements to the form's general instructions to specify when a form is considered incomplete or deficient when filed. Specifically, each Filer is required to provide all the information required by the form, including the

[34] A commenter asked the Commission to confirm that the amendments to the FOCUS Report in this rulemaking would not affect the Manner and Format Order. *See SIFMA 5/22/2023 Letter* at 8. The order that specifies the manner and format of filing the FOCUS Report for firms relying on a Commission substituted compliance order will also be amended. *See Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants That Are Not U.S. Persons and Are Relying on Substituted Compliance Determinations With Respect to Rule 18a–7,* Exchange Act release no. 93335 (Oct. 14, 2021), 86 FR 59208 (Oct. 26, 2021) (''Manner and Format Order''). In particular, the Manner and Format Order will be amended to specify the following: (1) Firms will complete new lines 1F–1H (commissions on commodity transactions, all other commissions, total commissions) in the Statement of Income section of FOCUS Report Part II. (2) Because box 1754b is being renumbered box JJ34b, firms will complete box JJ34b instead of box 1754b. (3) Firms will complete box 2143b (intangible assets) instead of boxes 3163b (goodwill) and 0426b (other intangible assets) since this release replaces boxes 3163b and 0426b (which are subtypes of intangible assets) with box 2143b. (4) Firms will complete new boxes P793b (common equity tier 1 capital ratio—column A) and P793bb (common equity tier 1 capital ratio—column B), as applicable, due to the addition of this capital ratio to Basel III regulations.

[35] *See infra* sections II.A.3, II.D.5, IV.B, and VII.A.

[36] *See infra* sections II.B.3, II.C.3, and VII.A.

[37] *See infra* sections V.B.2 and VII.A.

[38] *See* SIFMA 5/22/2023 Letter; Letter from Campbell Pryde, President and Chief Executive Officer, XBRL US (May 22, 2023) (''XBRL Letter''); Letter from Howard Spindel, Senior Managing Director, Integrated Solutions (May 22, 2023) (''Integrated Solutions Letter'').

[39] *See* SIFMA 5/22/2023 Letter at 1–7, 9, 11, and 14; XBRL Letter; Integrated Solutions Letter at 1, 2, and 4.

[40] For comments related specifically to structured data requirements for Form 1, Form CA–1, Rule 19b–4(e) information, Form X–17A–5 Part III, Form 17–H, Form X–17A–19, Rule 15fi–3(c) notices, and Rule 15fk–1 reports, *see infra* sections II.A.3 and II.D.5, II.E.4, IV.A, IV.B, V.A, V.C.2, and V.D.2, respectively. For comments related more generally to structured data requirements, *see infra* section VII.A. For comments related to the economic implications of the structured data requirements, *see infra* sections X.B.3, X.C.1.b, X.C.1.C., and X.E. A specific discussion of a comment related to substituted compliance and data is contained earlier in this section. *See supra* notes 28 to 34.

[41] *See infra* section X.

[42] *See* EDGAR Filer Manual, *available at https://www.sec.gov/edgar/filermanual* (''EDGAR Filer Manual'').

[43] As discussed in more detail in the Paperwork Reduction Act section of this release, filers of Covered SRO Forms have not previously made electronic filings on EDGAR. *See infra* section IX.C.1 (1. Form ID).

exhibits, and a filing that is incomplete or otherwise deficient may be returned to the Filer. The general instructions for each form also set forth what composes a complete filing. For instance, the general instructions for Form 1 now state that a completed form filed with the Commission shall consist of Form 1, responses to all applicable items, and any exhibits required in connection with the filing.

For each of the Covered SRO Forms, the general instructions require some or all of the information reported on the forms (including, where applicable, the exhibits to the forms) to be provided in a structured, machine-readable data language.[44] For Form 1 and Form CA–1, the general instructions require the submissions to be provided in part using Inline XBRL and in part using custom XML data languages specific to those Forms, with certain submissions that constitute copies of existing documents of a Filer (such as copies of governing documents or copies of contracts) to be included as text-searchable PDF attachments rather than structured data.[45] For Form 1–N and Form 15A, only the cover page (*i.e.,* execution page) of each form is required to be structured in a custom XML data language, while the remainder of each form remains unstructured. Finally, the information under Rule 19b–4(e)(2)(ii) is required to be provided on the listing SRO's website using a custom XML data language, thus making the information machine-readable.

Structured Data Requirements for Covered SRO Forms

Form	Inline XBRL Requirements	Custom XML Requirements	Unstructured PDF Requirements
Form CA-1	Schedule A, Exhibits C, F, H, J, K, L, M, O, R, S	Execution page, Exhibits A (in part), B, D, E (in part), I, N, Q	Exhibits A (in part), E (in part), G, P, T
Form 1	Exhibits D, E (in part), I	Execution page, Exhibits C (in part), H (in part), J, K, L, M, N, 17 CFR 240.6a-3(b) ("Rule 6a-3(b)") volume reports	Exhibits A, B, C (in part), E (in part), F, G, H (in part), 17 CFR 240.6a-3(a)(1) ("Rule 6a-3(a)(1)") supplemental materials
Form 1-N	None	Execution page only	Remainder of form
Form 15A	None	Execution page only	Remainder of form

For Form CA–1, Schedule A and Exhibits C, F, H, J, K, L, M, O, R, and S must be filed in Inline XBRL.[46] The execution page and Exhibits A (in part), B, D, E (in part), I, N, and Q must be filed in custom XML.[47] Exhibits A (in part), E (in part), G, P, and T must be filed as unstructured PDF documents.[48]

For Form 1, Exhibits D, E (in part), and I must be filed in Inline XBRL.[49]

[44] *See also infra* section V.A (discussing structured data requirements for Form X–17A–19, which is also filed by SROs).

[45] For example, the copies of governing documents that are required to be attached as Exhibit A to Form 1 and as part of Exhibit E to Form CA–1 are required to be included as a PDF attachment, rather than being structured in Inline XBRL or custom XML. *See infra* sections II.A.3 and II.D.5.

[46] Schedule A to the execution page requires certain descriptive responses to complement the clearing agency's execution page disclosures. Exhibit C requires a description of the clearing agency's organizational structure. Exhibit F requires a description of material pending legal proceedings involving the clearing agency. Exhibit H requires the clearing agency's financial statements. Exhibit J requires a description of the clearing agency's services and functions. Exhibit K requires a description of the clearing agency's security measures and procedures. Exhibit L requires a description of the clearing agency's safeguarding measures and procedures. Exhibit M requires a description of the clearing agency's backup systems. Exhibit O requires a description of criteria governing access to the clearing agency's services and a description of the reasons for imposing such criteria. Exhibit R requires a schedule of prohibitions and limitations on access to the clearing agency's services. Exhibit S requires, if applicable, a statement explaining why the clearing agency should be exempt.

[47] The execution page requires identifying information about the filer and the document being filed. Exhibit A requires, in relevant part, a list of persons controlling or directing the management or policies of the clearing agency, and descriptions of any unwritten agreements or arrangements through which such persons may exercise control or direction. Exhibit B requires a list of the clearing agency's officers, managers, and individuals occupying similar positions. Exhibit D requires a list of persons who are controlled by, or are under common control with, the clearing agency, as well as a description of each control relationship. Exhibit E requires, in relevant part, a list of dues, fees, and other charges imposed by the clearing agency for its clearing activities. Exhibit I requires the addresses of all offices in which the clearing agency conducts its activities, and an identification of the activities that are performed in each listed office. Exhibit N requires a list of participants, or applicants for participation, in the clearing agency. Exhibit Q requires a schedule of fees fixed by the clearing agency for services rendered by its participants.

[48] Exhibit A requires, in relevant part, copies of written agreements with persons who may control or direct the management or policies of the clearing agency. Exhibit E requires, in relevant part, a copy of the currently effective constitution, articles of incorporation or association, bylaws, rules, procedures and instruments corresponding thereto, of the clearing agency. Exhibit G requires copies of all contracts with any national securities exchange, national securities association or clearing agency or securities market for which the clearing agency acts as a clearing agency or performs clearing agency functions. Exhibit P requires copies of any forms of contracts governing the terms on which persons may subscribe to clearing agency services provided by the registrant. Exhibit T requires any conditions, reports, notices or other submissions to the Commission required as directed in any order approving applications for exemption from registration as a clearing agency.

[49] Exhibit D requires the unconsolidated financial statements for the latest fiscal year for each of the exchange's subsidiaries and affiliates. Exhibit E requires, in relevant part, a description of the manner of operation of the electronic trading system that the exchange uses to effect transactions. Exhibit I requires audited financial statements for the exchange's latest fiscal year.

The execution page, Exhibits C (in part), H (in part), J, K, L, M, N, and the 17 CFR 240.6a–3(b) (''Rule 6a–3(b)'') volume reports must be filed in custom XML.[50] Exhibits A, B, C (in part), E (in part), F, G, H (in part), and the 17 CFR 240.6a–3(a)(1) (''Rule 6a–3(a)(1)'') supplemental materials must be filed as unstructured PDF documents.[51] For Forms 15A and 1–N, only the execution page must be filed using a structured data language (custom XML).[52]

Similarly, the information under Rule 19b–4(e)(2)(ii) is required to be provided on the listing SRO's website using a custom XML data language, thus making the information machine-readable.

Structured Data Requirements for Rule 19b-4(e)

Disclosure	Inline XBRL Requirements	Custom XML Requirements	Unstructured PDF Requirements
Rule 19b-4(e) Information	None	Entire Rule 19b-4(e) posting	The entire posting must also be available as a rendered PDF document

The requirement that the Covered SRO Forms be filed, and information pursuant to Rule 19b–4(e) be posted, using structured data languages allows the Commission and, if applicable, investors, market participants, and other interested parties, to efficiently review and analyze the information.[53] In addition, the requirement to file Covered SRO Forms on EDGAR in a structured data language enables EDGAR to perform technical validations (*i.e.,* programmatic checks to ensure the documents are appropriately standardized, formatted, and complete) upon intake of the documents, which will improve the quality of the filed data by decreasing the incidence of non-substantive errors (such as the omission of values from fields that should always be populated).

Based on the Commission's experience in reviewing the Covered SRO Forms and information posted pursuant to Rule 19b–4(e), the requirement to electronically file the Covered SRO Forms and electronically post the information required pursuant to Rule 19b–4(e) allows for more efficient use of Commission resources related to reviewing, assessing, and processing these filings and postings. In addition, information provided on the Covered SRO Forms will be captured automatically by EDGAR and is text-searchable or machine-readable. The information posted pursuant to Rule 19b–4(e) will be machine-readable as well. As a result, these features will facilitate the Commission's oversight of SROs.

The amendments include no substantive changes to the information required to be filed on the Covered SRO Forms or the information required to be posted pursuant to Rule 19b–4(e). Rather, the amendment is intended simply to require and facilitate the electronic filing of the Covered SRO Forms and the disclosure of the information required under Rule 19b–4(e), which the SROs currently are required to provide to the Commission.

A. Form 1

1. Relevant Statutory Framework

Section 6(a) of the Exchange Act states, ''[a]n exchange may be registered as a national securities exchange . . . by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.'' [54] Rules 6a–1, 6a–2, and 6a–3 [55] under the Exchange Act and Form 1 [56] set forth the filing requirements for registration as a national securities exchange and for

[50] The execution page requires identifying information about the filer and the document being filed. Exhibit C requires, in relevant part, information regarding each subsidiary or affiliate of the exchange, and each entity with whom the exchange has an agreement relating to the operation of an electronic trading system to be used to effect transactions on the exchange (such as the name and address of the organization, a brief description of the nature and extent of the affiliation, and a brief description of the business or functions of the organization). Exhibit H requires, in relevant part, a schedule of listing fees and a brief description of the criteria governing which securities may be traded on the exchange. Exhibit J requires a list of the exchange's officers, governors, standing committee members, or persons performing similar functions. Exhibit K requires a list of the exchange's significant owners, shareholders, or partners. Exhibit L requires descriptions of the criteria, conditions, and procedures governing membership in the exchange. Exhibit M requires a list of members, participants, subscribers, or other users of the exchange, as well as a description of each user's activities. Exhibit N requires schedules of securities traded on the exchange. Rule 6a–3(b) of the Exchange Act requires a report concerning the securities sold on the exchange during the previous calendar month. *See* 17 CFR 240.6a–3(b).

[51] Exhibit A requires copies of the constitution, articles of incorporation or association with all subsequent amendments, and of existing bylaws or corresponding rules or instruments, whatever the name, of the exchange. Exhibit B requires copies of all written rulings, settled practices having the effect of rules, and interpretations of the Governing Board or other committee of the exchange in respect of any provisions of the constitution, bylaws, rules, or trading practices of the exchange which are not included in Exhibit A. Exhibit C requires, in relevant part, copies of the constitution, a copy of the articles of incorporation or association including all amendments, and copies of the existing bylaws or corresponding rules or instruments for each of the exchange's subsidiaries or affiliates and for each entity with whom the exchange has an agreement relating to the operation of an electronic trading system to be used to effect transactions on the exchange. Exhibit E requires, in relevant part, a copy of the exchange's users' manual. Exhibit F requires a complete set of all forms pertaining to membership, participation, or subscription to the exchange, application for approval as a person associated with a member, participant, or subscriber of the exchange, or any other similar materials. Exhibit G requires a complete set of all forms of financial statements, reports, or questionnaires required of members, participants, subscribers, or any other users relating to financial responsibility or minimum capital requirements for such members, participants, or any other users. Exhibit H requires, in relevant part, a complete set of documents composing the exchange's listing applications, including any agreements required to be executed in connection with listing. Rule 6a–3(a)(1) of the Exchange Act requires any material (including notices, circulars, bulletins, lists, and periodicals) issued or made generally available to members of, or participants or subscribers to, the exchange. *See* 17 CFR 240.6a–3(a)(1).

[52] The execution page requires identifying information about the filer and the document being filed.

[53] For more detailed discussions of the anticipated benefits associated with structured data requirements, *see infra* sections VII.A. and X.C.1.b.

[54] *See* 15 U.S.C. 78f(a).

[55] *See* 17 CFR 240.6a–1; 17 CFR 240.6a–2; 17 CFR 240.6a–3.

[56] *See* 17 CFR 249.1.

exempt exchanges, as well as requirements for the filing of supplemental material and reports.

2. Previous Requirements for Filing Form 1

Rule 6a–1 under the Exchange Act generally requires that an entity seeking to register as a national securities exchange, or seeking an exemption from such registration based on limited volume, file an application on Form 1 and correct any inaccuracy therein upon discovery.[57] Form 1 contains an execution page as well as 14 exhibits that must be filed by the exchange.[58] The Form 1 execution page requires certain basic information from the exchange, such as the name and street and mailing addresses of the exchange; the name, title, and telephone number of the exchange's contact employee; and the legal status of the exchange (*e.g.,* corporation or limited liability company). The Form 1 exhibits require the exchange to provide, among other things: its audited financial statements and unconsolidated financial statements for each subsidiary or affiliate; its governing documents and rules; the names of its members, participants, subscribers, and users; information regarding its non-member owners, shareholders, or partners; and the securities it lists or trades. The instructions to Form 1 require that one original and two copies of all the Form 1 materials be filed with the Commission in paper form.[59]

Rule 6a–2 requires a registered national securities exchange or an exempt exchange[60] to amend its Form 1 as specified therein. Specifically, pursuant to 17 CFR 240.6a–2(a) (''Rule 6a–2(a)''), an exchange must file an amendment to its Form 1 within 10 days after it takes any action that renders any part of its Form 1 execution page or the information provided in its Form 1 Exhibits C, F, G, H, J, K, or M inaccurate or incomplete.[61]

Pursuant to 17 CFR 240.6a–2(b) (''Rule 6a–2(b)''), on or before June 30 of each year, a national securities exchange or an exempt exchange[62] must file amendments to Exhibits D, I, K, M, and N with the Commission.[63] Pursuant to 17 CFR 240.6a–2(c) (''Rule 6a–2(c)''), on a triennial basis, an exchange must file complete Exhibits A, B, C, and J with the Commission.[64] Further, 17 CFR 240.6a–2(d) (''Rule 6a–2(d)'') provides alternative means for satisfying the requirements to file amendments to certain exhibits.[65] These alternative means require that the exchange: (i) on an annual or more frequent basis publish the information required by the pertinent exhibits, or cooperate in its publication;[66] (ii) keep the information up to date and make it available to the Commission and the public upon request;[67] or (iii) make the required information available continuously on an internet website controlled by the exchange.[68] As with Form 1 filings pursuant to Rule 6a–1, all amendments to Form 1 pursuant to Rule 6a–2 currently are submitted in paper form in accordance with the instructions to Form 1.[69]

Pursuant to Rule 6a–3, a national securities exchange or an exempt exchange also must file certain supplemental material and reports with the Commission.[70] Specifically, Rule 6a–3(a)(1) requires an exchange to file with the Commission any material issued or made generally available to members of, or participants or subscribers to, the exchange within 10 days after issuing or making such material available to such members, participants or subscribers.[71] 17 CFR 240.6a–3(a)(2) (''Rule 6a–3(a)(2)'') provides that, if information required by Rule 6a–3(a)(1) is available continuously on a website controlled by the exchange, in lieu of filing such information, the exchange may indicate the location of the website where the information can be found, and certify that the information is accurate as of its date.[72] Rule 6a–3(b) requires an exchange to file, within 15 days after the end of each calendar month, a volume report of securities transactions on the exchange during the calendar month. As with filings pursuant to Rules 6a–1 and 6a–2, all filings pursuant to Rule 6a–3 were previously submitted in paper form.[73]

Form 1 filings are made available to the public.[74] Form 1 filings made pursuant to pre-existing Rule 6a–1 are scanned and the resulting PDF documents are posted on the Commission's website. Form 1 filings made pursuant to pre-existing Rule 6a–2 are scanned and the resulting PDF documents are uploaded to EDGAR. Form 1 filings made pursuant to pre-existing Rule 6a–3 are available for inspection in paper form in the Commission's public reading room.

3. Requirement to Electronically File Form 1

The Commission is amending Rules 6a–1, 6a–2, and 6a–3 under the Exchange Act, as well as Form 1 and the instructions to Form 1, to require the electronic filing on EDGAR of all submissions required by the rules.[75] As explained in section II above, among other benefits, these amendments should increase efficiencies related to the filing of these forms and the review and analysis of the filed forms by the Commission and its staff as well as by investors, market participants, and other interested parties. In addition, the Commission is adopting conforming changes to Rule 3(b)(2) of its Informal and Other Procedures,[76] discussed below,[77] to clarify that defective

[57] *See* 17 CFR 240.6a–1.

[58] For purposes of this section relating to Form 1, these entities are collectively referred to as ''exchanges.''

[59] *See* 17 CFR 249.1.

[60] For purposes of this paragraph, these entities are collectively referred to as ''exchanges.''

[61] *See* 17 CFR 240.6a–2(a).

[62] For purposes of this paragraph, these entities are collectively referred to as ''exchanges.''

[63] *See* 17 CFR 240.6a–2(b).

[64] *See* 17 CFR 240.6a–2(c).

[65] *See* 17 CFR 240.6a–2(d). Rule 6a–2(d) applies to information required to be filed pursuant to paragraphs (b)(2) and (c) of Rule 6a–2. Rule 6a–2(d) sets forth alternative means of providing access to the information contained in Exhibits A, B, C, J, K, M, and N in lieu of filing the information with the Commission.

[66] The exchange would need to: (i) identify the publication in which the information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price of the publication; and (ii) certify the accuracy of such information as of its publication date. 17 CFR 240.6a–2(d)(1).

[67] The exchange would need to certify that the information is kept up to date and is available to the Commission and the public upon request. 17 CFR 240.6a–2(d)(2).

[68] The exchange would need to: (i) indicate the location of the internet website where such information may be found; and (ii) certify that the information available at such location is accurate as of its date. 17 CFR 240.6a–2(d)(3).

[69] *See* 17 CFR 249.1.

[70] *See* 17 CFR 240.6a–3.

[71] *See* 17 CFR 240.6a–3(a)(1).

[72] *See* 17 CFR 240.6a–3(a)(2).

[73] *See* 17 CFR 240.6a–3(b). This report must set forth: (i) the number of shares of stock sold and the aggregate dollar amount of such stock sold; (ii) the principal amount of bonds sold and the aggregate dollar amount of such bonds sold; and (iii) the number of rights and warrants sold and the aggregate dollar amount of such rights and warrants sold. *Id.*

[74] When the Commission previously amended Form 1 and Rules 6a–1, 6a–2, and 6a–3, it stated that ''[t]he information collected, retained, and/or filed pursuant to the rules for registration as a national securities exchange will not be confidential and will be available to the public.'' Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844, 70912 (Dec. 22, 1998) (Regulation of Exchanges and Alternative Trading Systems Adopting Release). Consistent with this statement, the Instructions to Form 1 specify that ''[n]o assurance of confidentiality is given by the Commission with respect to the responses made in Form 1. The public has access to the information contained in Form 1.''

[75] The Commission is also making a technical modification, not included in the Proposing Release, to Rule 232.101 (17 CFR 232.101(a)(1)) to include Form 1 in the list of filings required to be filed electronically.

[76] *See* 17 CFR 202.3(b)(2).

[77] *See infra* section II.G.

applications on Form 1 will be returned to the applicant and, although permitted as an option under the current rule, defective applications no longer will be held by the Commission. A description of the Commission's amendments to Rules 6a–1, 6a–2, and 6a–3, Form 1, and the instructions to Form 1 to implement the electronic filing requirement is provided below.

a. Amendments to Rules 6a–1, 6a–2, and 6a–3

The Commission is adding a new paragraph (e) to Rule 6a–1 to require the electronic filing on EDGAR of all Form 1 filings and amendments to such filings. The Commission also is amending Rules 6a–2(a), (b), and (c) to mandate the electronic filing on EDGAR of the Form 1 amendments under those paragraphs by requiring the electronic filing of those amendments, in accordance with 17 CFR 240.6a–1(e) (''Rule 6a–1(e)'').[78] Moreover, the Commission is updating in Rule 6a–2(c) the due date for the next filings due pursuant to Rule 6a–2(c), from June 30, 2001, to June 30, 2025.

As stated earlier in this section, Rule 6a–3 requires national securities exchanges and exempt exchanges to file certain supplemental material and reports with the Commission after registration or being granted an exemption from registration. The Commission is amending Rule 6a–3 to require national securities exchanges and exempt exchanges to file on EDGAR such supplemental material and reports electronically on Form 1, in accordance with Rule 6a–1(e).

b. Amendments to Form 1 and the Form 1 Instructions

In addition to the revisions to Rules 6a–1, 6a–2, and 6a–3, the Commission is revising and reformatting Form 1, and the instructions thereto, to accommodate the electronic filing on EDGAR of initial applications, subsequent amendments, supplemental material, and reports that are made on Form 1. The changes to Form 1 to permit electronic submission to the Commission require minimal modifications to the form, as described below. The Commission also is revising the Form 1 instructions to facilitate the electronic filing and machine-readability of Form 1.[79] As discussed below, these revisions to Form 1 facilitate the filing and use of the information mandated by Form 1 and related Rules 6a–1, 6a–2, and 6a–3.[80]

Electronic Form 1 solicits information through prompts on the form. Electronic Form 1 also requires an exchange to attach exhibits via a new exhibit table that is part of electronic Form 1. Where Rule 6a–2 allows for alternative means of filing the information required under certain exhibits, the new exhibit table permits an exchange to electronically provide the certifications and details necessary for an exchange to avail itself of those alternative means. The information required to be filed with the exhibits is not changing. Currently, Rule 6a–2 provides that in lieu of filing certain exhibits as part of a paper Form 1 submission, an exchange may: (i) identify where such information is published and certify its accuracy as of its publication date; (ii) certify that the information is available to the Commission and the public upon request; or (iii) indicate the location of the internet website where such information may be found and certify that the information available at such location is accurate as of its date.[81] The amendments do not change the availability of these alternative means, only the method of providing the necessary certifications and details. As described above, instead of attaching paper exhibits, the amendments require the exhibits to be submitted electronically on EDGAR. Similarly, instead of providing on paper the certifications and details required for an exchange to avail itself of these alternative means, the amendments require those certifications and details to be provided via the electronic Form 1. In the event an exchange indicates on Form 1 an internet website where such information may be found, where applicable, the Commission is requiring the exchange to provide on Form 1 the Uniform Resource Locator(s) (''URL(s)'') of the location(s) on the internet website where such information may be found, and to certify that information posted on such a website is accurate as of its date and is free and accessible (without any encumbrances or restrictions) by the general public.

For electronic Form 1, the Commission is adding prompts prior to section I that require the exchange to identify the basis for submitting the form. Specifically, electronic Form 1 requires the exchange to check a box stating one of the following: (i) whether the filing is an initial Form 1 application and if it is, whether the exchange is applying to be a national securities exchange or an exempt exchange; (ii) whether the filing is an amendment to an initial Form 1 application prior to Commission action to grant registration or an exemption based on limited volume; (iii) whether the filing is to provide the exchange's consent to an extension of the time period within which the Commission must take action on an initial Form 1 application;[82] (iv) whether the filing is to withdraw an initial Form 1 application prior to the Commission taking action on the application; (v) whether the filing is an amendment to Form 1 pursuant to Rule 6a–2 following the Commission's granting of registration or an exemption; or (vi) whether the filing is supplemental material or reports pursuant to Rule 6a–3.[83] Previously, there was no place on Form 1 for an exchange to indicate the type of filing that it is submitting. For example, previously Form 1 did not provide an exchange the ability to indicate whether an initial Form 1 filing is an application to be a national

[78] The Commission also is making a technical amendment to remove two extraneous commas from the text of Rule 6a–2(a). The Commission further is amending paragraph (d) of Rule 6a–2 to clarify that any certifications and other information permitted under that paragraph in lieu of filing the required documents as exhibits to Form 1 must be provided using Form 1. This change should facilitate compliance with the Rule 6a–2 requirements by exchanges and exempt exchanges by clarifying and standardizing the means to file any certifications and other information submitted pursuant to paragraph (d) of Rule 6a–2.

[79] In addition, the Commission is removing the definition of the word ''applicant'' from the Form 1 instructions and replacing the word ''applicant'' with the word ''exchange'' on Form 1. Currently, Form 1 uses both the words ''exchange'' and ''applicant'' to refer to the entity filing the Form 1. The Commission is making this technical, change to make consistent the terminology used in Form 1.

[80] The Commission is also making some technical amendments to what was proposed for Form 1 and Rules 6a–2 and 6a–3. In particular, the Commission is: (1) in Rules 6a–2 and 6a–3, removing the redundant qualifier ''of this chapter'' from the cross-references to Rule 6a–1(e); (2) in Section I of Form 1, adding the parenthetical ''if any'' next to ''Facsimile''; (3) in Section V of Form 1, capitalizing certain words in the headings of the table of exhibits; (4) in Section V of Form 1, replacing ''by-laws'' with ''bylaws''; (5) in Section V of Form 1 and in the Form 1 General Instructions, replaced ''comprising'' with ''composing''; (6) in the Form 1 General Instructions, updating the estimated hourly burden of completing an initial Form 1 application from the old estimate of 891 hours to the new estimate of 901 hours; (7) in the Form 1 General Instructions, clarifying that the estimated hourly burden of 26 hours to prepare a Form 1 amendment refers to Form 1 amendments filed pursuant to Rules 6a–2(a) and 6a–2(c); and (8) in the Form General Instructions, specifying that the estimated hourly burden to prepare a Form 1 amendment pursuant to Rule 6a–2(b) is 40 hours.

[81] *See* 17 CFR 240.6a–2(d).

[82] Such consents to an extension of the time period within which the Commission must act currently are submitted as letters in paper form. Adding the ability to indicate that the exchange consents to an extension of time on electronic Form 1 will streamline the process for making such a submission. *See* 15 U.S.C. 78s(a)(1)(B).

[83] The Commission also is amending the instructions to Form 1 to add a new section titled ''When to Use the Form,'' which explains when Form 1 filings are required.

securities exchange or an exempt exchange. Accordingly, capturing information regarding the type of Form 1 filing facilitates the exchange's communication with the Commission and helps the Commission more efficiently review Form 1 submissions.

Electronic Form 1 also captures contact information for the exchange and certain individuals. Consistent with the previous version of Form 1, electronic Form 1 requires the exchange to identify contact information for the exchange, a contact employee, and counsel for the exchange. Unlike previous Form 1, electronic Form 1 additionally requires an email address for the contact employee, which could take the form of an email to a specific contact employee or a general email to a group of contact employees. The requirement to provide an email address for the exchange contact employee expedites communications between Commission staff and the relevant exchange.

Electronic Form 1 requires an exchange to electronically attach exhibits by using an exhibit table. The exhibit table contains columns for the name of the exhibit, information required by the exhibit, whether alternative means of satisfying the filing of an exhibit are available for that particular exhibit (*e.g.,* URL(s)), if permitted by applicable Commission rule, and checkboxes to indicate whether such alternative means are being used.[84] The information required by the exhibits to electronic Form 1 remains the same as previous Form 1. In addition, to facilitate the electronic filing of the supplemental materials required under 17 CFR 240.6a–3(a) (''Rule 6a–3(a)'') and the volume reports required under Rule 6a–3(b), the Commission is adding new sections III and IV, respectively, to Form 1. Sections III and IV do not add new requirements beyond those currently included in Rules 6a–3(a) and (b). Rule 6a–3(a) requires exchanges to file certain information with the Commission or, in the alternative, to indicate where such information can be found on an internet website controlled by the exchange. The amendments require the filing of this information through section III of electronic Form 1 or, in the alternative, to provide through section III of electronic Form 1 the URL(s) of the location(s) on the internet website where such information can be found. If an exchange chooses this latter option and provides URL(s) of an internet website where such information can be found, section III also clarifies that such website must be free and accessible (without any encumbrances or restrictions) by the general public. Likewise, section IV does not change the substance of what must be filed; it merely requires the filing of the volume reports required under Rule 6a–3(b) to be made on electronic Form 1 instead of in paper format.

Furthermore, electronic Form 1 continues to require an exchange to consent to service of any civil action brought by, or notice of any proceeding before, the Commission in connection with its activities. The existing language under which the exchange consents to service via registered or certified mail at the main or mailing address provided on Form 1 continues to be included in the electronic form.[85]

In addition, electronic Form 1 requires the individual who is submitting the form to check a box on behalf of the exchange to represent that the information and statements contained in the Form 1, including exhibits, schedules, or other documents, are current, true, and complete. The previous requirement to sign and notarize the form is being eliminated because it is unnecessary, not compatible with, and not required for electronic filing on EDGAR.

Finally, electronic Form 1 requires exchanges to structure Exhibits D (unconsolidated financial statements of each of the exchange's subsidiaries or affiliates), E (description of the electronic trading system's manner of operation, except for the attached copy of the users' manual), and I (audited financial statements of the exchange) in Inline XBRL. The execution page, Exhibits C (information regarding each of the exchange's subsidiaries, affiliates, and entities with whom the exchange has an agreement relating to the operation of the exchange's electronic trading system, except for the copies of existing documents listed below), H (listing fee schedule and brief description of the criteria governing which securities may be traded on the exchange, except for the copies of existing documents listed below), J (list of officers, governors, standing committee members, or persons performing similar functions), K (list of significant shareholders or partners), L (description of criteria, conditions, and procedures governing membership in the exchange), M (list of members, participants, subscribers, or other users of the exchange and description of each user's activities), N (schedules of securities traded on the exchange), and the information required under Rule 6a–3(b) (reports regarding the securities sold on the exchange over the previous calendar month) must also be structured, albeit in a custom XML data language specific to Form 1 rather than in Inline XBRL.

Attached copies of existing documents, including those filed with Exhibits A (constitution, articles of incorporation or association, and existing bylaws or corresponding rules or instruments of the exchange), B (written rulings, settled practices having the effect of rules, and interpretations of the Governing Board or other committee of the exchange in respect of any provisions of the constitution, bylaws, rules, or trading practices of the exchange), C (written rulings, settled practices having the effect of rules, and interpretations of the Governing Board or other committee of the exchange in respect of any provisions of the constitution, bylaws, rules, or trading practices of the exchange's affiliates, subsidiaries, or entities with whom the exchange has an agreement related to the operation of the exchange's electronic trading system), E (listing applications and required agreements), F (forms pertaining to membership, participation, or subscription, application for approval as a person associated with a member, participant, or subscriber of the exchange, or any other similar materials), G (forms of financial statements, reports, or questionnaires required of members, participants, subscribers, or any other users relating to financial responsibility or minimum capital requirements for such members, participants, or any other users), H (listing applications and agreements required to be executed in connection with listing), and the information required under Rule 6a–3(a)(1) (supplemental materials issued or made available to members of, or participants or subscribers to, the exchange), must be filed as unstructured PDF documents.

[84] *See supra* notes 66–68.

[85] The Commission also is deleting the outdated provision allowing for service of any civil action pursuant to confirmed telegram.

Structured Data Requirements for Form 1

Inline XBRL	Exhibits D, E (in part), I
Custom XML	Execution page, Exhibits C (in part), H (in part), J, K, L, M, N, Rule 6a-3(b) monthly reports
Unstructured PDF	Exhibits A, B, C (in part), E (in part), F, G, H (in part), Rule 6a-3(a)(1) supplemental materials

The structuring requirements will facilitate access to the exchange's disclosures (such as by enabling efficient retrieval of only those disclosures filed by a subset of exchanges over particular reporting periods) and their analysis (such as by enabling efficient comparisons of individual disclosures or sets of disclosures across different exchanges and reporting periods). This will benefit market participants through enhanced oversight of the exchanges. For example, Commission staff will be able to leverage the machine-readability of Exhibit I to automatically flag any atypical fluctuations in particular financial line items across every exchange's financial statements, and assess whether closer examination of any such fluctuations is warranted. Similarly, Commission staff will be able to leverage the machine-readability of Exhibit E by retrieving automated redline comparisons of the manner of operations description disclosed by exchanges from prior reporting periods to the current reporting period, thus pinpointing any widespread operational changes for further assessment.

Market participants (such as issuers, analysts, and other exchanges) will also benefit from direct use of the machine-readable disclosures on Form 1. For example, the structuring requirement for Exhibit I will allow analysts to more quickly and efficiently compare the audited financial statements of exchanges as they determine the exchange on which they list their securities. Without the structured data requirements, these analyses, to the extent they are done, need to be performed manually, such as by gathering the current and former financial statements for each exchange and entering all financial line items of interest into databases, resulting in a less efficient and precise process. In addition, the structured data requirement enables EDGAR to perform technical validations (*i.e.,* programmatic checks to ensure the documents are appropriately standardized, formatted, and complete) upon intake of the Form 1 disclosures, thus improving the quality of the filed data by decreasing the incidence of non-substantive errors (such as the omission of values from fields that should always be populated).

The nature and extent of such benefits may vary based on the content of each Form 1 Exhibit. As discussed in the subsequent economic analysis, studies of XBRL requirements for public operating company financial statements indicate a number of benefits for investors and market participants.[86] The probability that, and extent to which, these particular benefits arise from structured Form 1 disclosures could be heightened for Exhibits D and I, which likewise include structured financial statements under the rule amendments. In addition, the particular benefits of structuring data will vary based on the type of disclosures included in each particular Exhibit. Structured numerical disclosures, such as those included on Exhibit I, lend themselves to mathematical functionality, such as the calculation of key ratios or the identification of extreme statistical outliers. Structured textual disclosures, such as those included on Exhibit E, lend themselves to targeted keyword searching and more sophisticated sentiment analysis.

After consideration, the Commission, as proposed, is requiring Inline XBRL for certain exhibits to Form 1 and custom XML for others because each data language is better suited for particular types of disclosures. Exhibits D and I require disclosure of financial statements, and Inline XBRL was designed to accommodate financial statement information, including the particular metadata (*e.g.,* the relevant fiscal period, whether the line item is on the balance sheet, and whether the line item is a credit or debit) that must be linked to each data point within the financial statements to fully convey its semantic meaning to a machine reader. Exhibit E requires narrative disclosure regarding the trading system's manner of operations, and whereas custom XML data languages only have the capacity to accommodate brief narrative descriptions, Inline XBRL can accommodate longer narrative descriptions with presentation capabilities that preserve human-readability and maintain machine-readability.[87]

The execution page of Form 1, Exhibits C (in part), H (in part), J, K, L, M, and N to Form 1, and the Rule 6a–3(b) reports filed on Form 1 do not require such content. For these disclosures, the use of custom XML data languages is preferable to Inline XBRL, because it yields smaller file sizes and therefore enables more streamlined processing of the information.[88]

Requiring custom XML rather than Inline XBRL for these disclosures is also preferable because it enables EDGAR to generate fillable web forms that permit exchanges to input their disclosures into form fields rather than structure their disclosures in custom XML themselves. This added flexibility could ease the burden of compliance on exchanges in some instances, although exchanges may have the requisite sophistication to encode the disclosures in custom XML themselves without relying on fillable web forms.[89]

The Commission is requiring exchanges to file copies of existing documents, such as copies of bylaws, written agreements, and listing applications, as unstructured PDF attachments. An unstructured PDF requirement is preferable to a structured data requirement for these documents, because requiring exchanges to retroactively structure these existing documents, which were prepared for purposes outside of fulfilling the Commission's disclosure requirements, is likely to impose costly compliance burdens on exchanges that may not be justified in light of the commensurate

[86] *See infra* section X.C.1.b.

[87] Compare, for example, the Inline XBRL requirement for the description of investment strategies that open-end funds disclose on Form N–1A to the custom XML requirement for the brief description of the applicant's business that SBS Entities disclose on Form SBSE. *See* Item 4 of Form N–1A; Item 7 of Form SBSE.

[88] *See also infra* section X.E.4 (discussing other structured data languages that would result in smaller file sizes than Inline XBRL).

[89] *See infra* sections IX.D.2 and X.C.2.b.

informational benefits associated with more efficient disclosure use. Thus, the structured data requirements are not warranted for these copies of existing documents.

One commenter suggested that all items in Form 1 should be submitted in XBRL, except for copies of existing documents which could be submitted in PDF and linked via tags in an XBRL document.[90] The commenter stated that there were different ''flavors'' of XBRL such as XML, XHTML (*i.e.,* Inline XBRL), JSON, and CSV, each appropriate for slightly different reporting needs, and that requiring Inline XBRL for Form 1 would be advisable due to the financial and narrative data that Form 1 elicits.[91] The Commission agrees with the commenter that Inline XBRL is suitable for financial and narrative data, and is therefore requiring Inline XBRL for those Form 1 exhibits with financial disclosures (*i.e.,* Exhibits D and I) and extended narrative disclosures (*i.e.,* Exhibit E except for the copy of the users' manual). However, the Commission disagrees with the commenter that an Inline XBRL requirement would be more suitable than a custom XML requirement for the other structured Form 1 disclosures.

In that regard, the commenter stated that requiring a custom XML schema designed to fit a single reporting situation—in contrast with XBRL, which is designed for many reporting situations and for which there is a large competitive marketplace of tools to support reporting preparation—must be managed with custom applications, and using such applications will likely be more expensive for filers than using existing XBRL applications.[92] However, the Commission disagrees that the preparation of custom XML Form 1 exhibits must be managed with custom applications, because exchanges will have means of complying with Form 1 custom XML requirements that do not entail the use of such applications. First, exchanges are sophisticated entities and likely have experience encoding disclosures using custom XML schemas without the use of custom applications. Exchanges are likely able to leverage that experience to create custom XML Form 1 exhibits without the need to incur additional expense. Second, exchanges will have the option to forgo creating structuring custom XML Form 1 exhibits altogether, and instead input their disclosures into a fillable web form that EDGAR will make available to Form 1 filers. Exchanges that use the fillable form option will similarly not need to create custom commercial applications to prepare the custom XML exhibits. In either case above, exchanges will be able to comply with the custom XML Form 1 requirements without needing to incur additional expense by creating any application specifically designed to prepare data using the custom XML schema for Form 1 exhibits.

The commenter also stated that it would be more efficient for data users to extract data from Form 1 if all the data were structured in Inline XBRL, because software applications would be more easily able to extract data from documents if everything contained in the document were identically structured. The Commission agrees with the commenter that using different structured data languages for Form 1 will make it more difficult to incorporate the Inline XBRL disclosures filed on Form 1 into the same datasets and applications as the custom XML disclosures filed on Form 1 and run analyses across the differently formatted Form 1 disclosures, without undertaking data conversion processes that are frequently burdensome and imprecise. Nonetheless, the streamlined data processing associated with the smaller sizes of the custom XML exhibits and execution page, as described earlier in this section, justifies the use of custom XML structuring for some Form 1 exhibits rather than Inline XBRL structuring for all Form 1 exhibits.

With respect to the copies of existing documents proposed to be submitted as PDF documents, the commenter stated that retroactively structuring such documents is likely to be overly burdensome, but that the information could be made more accessible by requiring reporting entities to prepare a single XBRL document with tagged and appropriately labeled links to the various PDF documents.[93] The Commission agrees with the commenter that retroactive structuring of such documents is not justified in light of the burdens on exchanges. The Commission does not agree that requiring exchanges to prepare an XBRL document with tagged and labeled links to the various PDF exhibits is appropriate, because the exhibit table requirement in electronic Form 1 will already provide sufficient accessibility and clarity as to the exhibits contained in Form 1 (including allowing for PDF exhibits) without requiring exchanges to prepare a separate XBRL document. Specifically, the Commission is requiring an exchange filing Form 1 to electronically attach PDF exhibits, identify the name of each PDF exhibit, the information required by each PDF exhibit, whether alternative means of satisfying the filing of an exhibit are available for that particular PDF exhibit, and whether such alternative means are being used to file that particular PDF exhibit. Because this set of requirements will facilitate Form 1 data users finding and accessing PDF exhibits, the Commission disagrees with the commenter that exchanges should be required to prepare a single XBRL document with tagged links to the various PDF documents with appropriate labels.

B. Form 1–N

1. Relevant Statutory Framework

Section 6 of the Exchange Act[94] sets out a framework for the registration and regulation of national securities exchanges. The Exchange Act was amended by the Commodity Futures Modernization Act of 2000 (''CFMA'')[95] to allow the trading of security futures products. Under the CFMA, markets that wish to trade security futures products are regulated jointly by the Commission and the CFTC. The Exchange Act, as amended by the CFMA, provides that futures exchanges that meet certain criteria and that wish to trade security futures products may file notice with the Commission to become a ''Security Futures Product Exchange.''[96]

2. Previous Requirements for Filing Form 1–N

Rule 6a–4 under the Exchange Act[97] sets forth the notice registration procedures for Security Futures Product Exchanges and permits futures exchanges to submit a notice registration on Form 1–N.[98] Form 1–N requires information regarding how the futures exchange operates, its rules and procedures, corporate governance, its criteria for membership, its subsidiaries and affiliates, and the security futures products it intends to trade. Rule 6a–4 also requires entities that have submitted an initial Form 1–N to file: (1) amendments to Form 1–N in the event any information provided in the initial Form 1–N is rendered inaccurate or incomplete; (2) periodic updates of certain information provided in the initial Form 1–N; (3) certain information

[90] *See* XBRL Letter at 3–4. The commenter agreed that requiring exchanges to retroactively structure existing documents is likely to be overly burdensome. *See id.* at 4.

[91] *See id.* at 4.

[92] *See id.*

[93] *See id.* at 2 and 4.

[94] *See* 15 U.S.C. 78f.

[95] *See* Public Law 106–554, Appendix E, 114 Stat. 2763.

[96] *See* 15 U.S.C. 78f(g).

[97] *See* 17 CFR 240.6a–4.

[98] *See* 17 CFR 249.10.

that is provided to the Security Futures Product Exchange's members; and (4) a monthly report summarizing the Security Futures Product Exchange's trading of security futures products. The information required to be filed with the Commission pursuant to Rule 6a–4 is designed to enable the Commission to carry out its statutorily mandated oversight functions and to ensure that Security Futures Product Exchanges continue to be in compliance with the Exchange Act.

3. Requirement to Electronically File Form 1–N

The Commission is amending Rule 6a–4 under the Exchange Act, as well as Form 1–N and the instructions to Form 1–N, to require the electronic filing on EDGAR of all submissions required by the rule and form.[99] As explained in the introduction to this section,[100] among other benefits, these amendments will increase efficiencies and decrease overall costs [101] related to the filing of these forms and the review of the filed forms by the Commission and its staff. A description of the Commission's amendments to Rule 6a–4, Form 1–N, and the instructions to Form 1–N to implement this electronic filing requirement is provided below.

a. Amendments to Rule 6a–4

The Commission is adding a new paragraph (d) to Rule 6a–4 to require the electronic filing of Form 1–N on EDGAR for exchange notice registrations and amendments made under Rule 6a–4 in accordance with the requirements of Regulation S–T.[102]

The Commission also is amending the text of Rule 6a–4 to accommodate electronic filing, as well as to make minor corrections and clarifications. Specifically, the Commission is modifying Rules 6a–4(a)(1) and 6a–4(c)(2) to resolve existing typographical errors and Rule 6a–4(b)(1)(i) to refer to the appropriate section of Form 1–N, rather than the ''Execution Page,'' to reflect the shift to electronic filing. The Commission is amending Rules 6a–4(b)(5)(i), (ii) and (iii) to delete the phrase ''satisfy this filing requirement by'' because the language is superfluous. The Commission is making conforming changes to Rules 6a–4(b)(5)(i)(A) and (B), and 6a–4(b)(5)(ii) and (iii)(A) and (B) to clarify that certain certifications by the exchange and listing of websites containing information required by Rule 6a–4 are required to be made on electronic Form 1–N. The Commission further is updating the due dates in Rules 6a–4(b)(3) and (4) for the next annual and triennial filings from June 30, 2002, and June 30, 2004, to June 30, 2025. Finally, the Commission is making non-substantive changes to Rules 6a–4(a)(1)(i), 6a–4(a)(1)(i)(B), and 6a–4(a)(1)(ii)(B) to update cross-references in those rules to the Commodities Exchange Act to reflect changes to the Commodities Exchange Act resulting from the Dodd-Frank Act.

b. Amendments to Form 1–N and the Form 1–N Instructions

In addition to the revisions to Rule 6a–4, the Commission is revising and reformatting Form 1–N, and the instructions thereto, to accommodate the electronic filing of initial notices, subsequent amendments, supplemental material, and reports that are made on Form 1–N. The changes to Form 1–N to permit electronic filing to the Commission require minimal modifications to the form, as described below. The Commission also is revising the Form 1–N instructions to facilitate the electronic filing of Form 1–N on EDGAR. As explained in the introduction to this section,[103] these revisions address when a form is considered incomplete or deficient when filed and use of a custom XML data language for the cover page. These revisions to Form 1–N and the Form 1–N instructions will facilitate the filing of the information mandated by Form 1–N and Rule 6a–4.

Electronic Form 1–N solicits information through prompts on the form that are expected to better organize the information collected. Electronic Form 1–N also requires an exchange to attach exhibits (or provide website URL(s) where applicable) via a new exhibit table that is part of electronic Form 1–N. The exhibit table contains columns for the name of the exhibit, information required by the exhibit, whether alternative means of satisfying the filing of an exhibit are available for that particular exhibit (*e.g.,* URL(s)), if permitted by applicable Commission rule, and checkboxes to indicate whether such alternative means are being used. Where Rule 6a–4 allows for alternative means of filing the information required under certain exhibits, the new exhibit table permits an exchange to electronically provide the certifications and details necessary for an exchange to avail itself of these alternative means. The information required to be filed with the exhibits is not changing. Rule 6a–4 provides that in lieu of filing certain exhibits as part of a paper Form 1–N submission, an exchange may either: (i) identify where such information is published and certify its accuracy as of its publication date; (ii) certify that the information is available to the Commission and the public upon request; or (iii) indicate the location of the internet website where such information may be found and certify that the information available at such location is accurate as of its date.[104] The amended rule does not change the availability of these alternative means, only the method of providing the necessary certifications and details. As described above, instead of attaching paper exhibits, those exhibits need to be submitted electronically. Similarly, instead of providing on paper the certifications and details required for an exchange to avail itself of these alternative means, those certifications and details need to be provided via the electronic Form 1–N. In the event an exchange indicates on Form 1–N the location(s) of an internet website where such information may be found, where applicable, the Commission is requiring the exchange to provide the URL(s) of the location(s) on the internet website where such information may be found, to certify that the information posted on such website(s) is accurate as of its date and is free and accessible (without any encumbrances or restrictions) to the general public, as an alternative to filing certain exhibits required by electronic Form 1–N.

For electronic Form 1–N, the Commission is adding prompts prior to section I that require the exchange to identify the basis for submitting Form 1–N. Specifically, electronic Form 1–N requires the exchange to check a box stating one of the following: (i) whether the filing is an initial notice of registration; (ii) whether the filing is an amendment to the notice of registration; (iii) whether the exchange is providing its annual filing for the year; (iv) whether the exchange is providing a triennial filing; (v) whether the

[99] The Commission is also making a technical modification, not included in the Proposing Release, to Rule 232.101 (17 CFR 232.101(a)(1)) to include Form 1–N in the list of filings required to be filed electronically.

[100] *See supra* introductory text to section II.

[101] As discussed in more detail in the Economic Analysis, some entities that currently do not use EDGAR may incur relatively small initial costs to submit filings on EDGAR and there are some potential costs associated with structuring certain information. However, savings from filing these forms electronically rather than in paper is expected to be greater than the costs. *See infra* X.C.1.a.

[102] Regulation S–T governs the electronic submission of documents filed or otherwise submitted to the Commission and encompasses the general rules and regulations for electronic filing via the EDGAR system. *See* 17 CFR 232.10 through 232.501.

[103] *See supra* introductory text to section II.

[104] *See* 17 CFR 240.6a–2(b)(5).

exchange is providing supplemental materials; or (vi) whether the exchange is providing a report of security futures products traded during the prior calendar month.

The Commission also is amending the instructions to Form 1–N to add a new section titled ''When to Use the Form,'' which explains when Form 1–N filings are required, and which of the six types of Form 1–N filing is required (*e.g.,* initial registration, supplemental material). Currently, there is no place on Form 1–N for an exchange to indicate the type of filing that it is submitting, other than whether it is an application or an amendment. Capturing information regarding the type of Form 1–N filing: (1) enhances the exchange's communication with the Commission; (2) helps the Commission more efficiently review Form 1–N submissions; and (3) facilitates the searching and sorting through of Form 1–N submissions by other potential users such as market participants and investors.

Electronic Form 1–N also captures contact information for the exchange and certain individuals. Consistent with previous Form 1–N, electronic Form 1–N requires the exchange to identify contact information for the exchange, a contact employee, and counsel for the exchange. Unlike previous Form 1–N, electronic Form 1–N additionally requires an email address for the contact employee and an email address for the exchange's counsel. The requirement to provide an email address for the exchange contact employee and the exchange's counsel expedites any subsequent communications between Commission staff and the relevant exchange.

In addition, to facilitate the electronic filing of the supplemental materials and monthly reports required under Rule 6a–4(c), the Commission is adding new sections III and IV, respectively, to Form 1–N.[105] Sections III and IV require such materials and reports to be attached to Form 1–N via the new exhibit table in the same manner as exhibits to Form 1–N, and section III provides the exchange with the ability to enter URL(s) to the website location of the supplemental materials in lieu of its filing the supplemental materials via Form 1–N. Sections III and IV do not add new requirements beyond those previously included in Rule 6a–4(c). Rule 6a–4(c)(1) requires exchanges to file certain information with the Commission or in the alternative to indicate where such information can be found on an internet website controlled by the exchange. The amended rule requires the filing of this information through section III of electronic Form 1–N or, in the alternative, to provide through section III of electronic Form 1–N the URL(s) of the location(s) on the internet website where such information can be found. Section III also clarifies that such website must be free and accessible (without any encumbrances or restrictions) by the general public. Likewise, section IV does not change the substance of what must be reported; it merely requires the reporting of information required under Rule 6a–4(c) to be made on electronic Form 1–N instead of in paper format.

Furthermore, electronic Form 1–N continues to require an exchange to consent to service of any civil action brought by, or notice of any proceeding before, the Commission in connection with its activities. The previous language under which the Security Futures Product Exchange consents to service via registered or certified mail at the main or mailing address provided on Form 1–N continues to be included in the electronically filed form.[106]

In addition, electronic Form 1–N requires the individual who is submitting the form to check a box on behalf of the Security Futures Product Exchange to represent that the information and statements contained in the Form 1–N, including exhibits, schedules, or other documents, are current, true, and complete. The previous requirement to sign and notarize the form is being eliminated because it is unnecessary, not compatible with, and not required for electronic filing through EDGAR.[107]

Finally, electronic Form 1–N requires filers to submit the execution page in a custom XML data language specific to Form 1–N. As with the other Covered SRO Forms, filers are able to input their execution page disclosures into a fillable web form that EDGAR subsequently converts to custom XML. Structuring the execution page in custom XML improves the ability to sort, filter, and otherwise organize Form 1–N filings without creating significant additional burden on Form 1–N filers. The remainder of Form 1–N is not structured, however, because the very limited number of Form 1–N filers and filings could mitigate much of the benefit derived from machine-readability of the disclosures contained therein.[108]

C. Form 15A

1. Relevant Statutory Framework

Section 15A of the Exchange Act sets forth the statutory standards for registration as a national securities association or as an affiliated securities association.[109] Section 15A(b) states that the Commission shall not approve registration as a national securities association unless the Commission determines that the applicant meets specified statutory criteria.[110] Under Exchange Act Rule 15Aa–1, an applicant for registration as a national securities association must file a registration statement with the Commission on Form X–15AA–1.[111] The information required to be provided on Form X–15AA–1 includes, among other things, lists of officers, governors, and committee members, as well as membership lists.[112] The Commission reviews the completed Form X–15AA–1 to evaluate whether the applicant meets the standards set forth in section 15A(b) for registration as a national securities association.

Furthermore, under Exchange Act Rule 15Aj–1(a), every association applying for registration or registered as a national securities association must file with the Commission an amendment to its registration statement or any amendment or supplement thereto promptly after discovering any inaccuracy therein. Similarly, under

[105] The Commission is not including a question mark inadvertently introduced into Section III of Form 1–N when proposed. The Commission is also making technical amendments to Rule 6a–4(a)(1)(ii) to change the words ''market place'' to ''marketplace'' and Rule 6a–4(c)(1)(ii) to change the word ''Internet'' to ''internet.''

[106] The Commission also is deleting the outdated provision allowing for service of any civil action pursuant to confirmed telegram.

[107] The Commission is making a technical amendment to Section I of electronic Form 1–N to add the words ''(if any)'' after Item 4 ''Facsimile.'' The Commission is making a technical amendment to Section V of electronic Form 1–N under the column for ''information Required by the Exhibit'' relating to Exhibit H, changing the words ''primarily engage'' to ''primarily engaged.'' The Commission is making a technical amendment to Section V of electronic Form 1–N to replace the words ''by-laws'' with ''bylaws.'' The Commission is making a technical amendment to Section V of electronic Form 1–N by capitalizing certain words in the headings of the table of exhibits. Lastly, the Commission is making a technical amendment to the Form 1–N General Instructions to replace ''comprising'' with ''composing.''

[108] *See infra* section IX.C.3.

[109] *See* 15 U.S.C. 78*o*–3.

[110] *See* 15 U.S.C. 78*o*–3(b).

[111] *See* Exchange Act Rule 15Aa–1 (17 CFR 240.15Aa–1) and Form X–15AA–1 (17 CFR 249.801). Currently, FINRA is the only national securities association registered with the Commission. The National Futures Association (''NFA''), as specified in section 15A(k) of the Exchange Act, is also registered as a national securities association, but only for the limited purpose of regulating the activities of NFA members that are registered as brokers or dealers in security futures products under section 15(b)(11) of the Exchange Act.

[112] *See* 17 CFR 249.801.

Exchange Act Rule 15Aj–1(b), every association applying for registration or registered as a national securities association, promptly after any change which renders no longer accurate any information contained or incorporated in its registration statement or in any amendment or supplement thereto, must file with the Commission a current supplement to its registration statement setting forth such change.[113]

Finally, under Exchange Act Rule 15Aj–1(c), every association applying for registration or registered as a national securities association must file annual amendments to its registration statement with the Commission.[114]

2. Previous Requirements for Filing Forms X–15AA–1, X–15AJ–1, and X–15AJ–2

Prior to these amendments, an applicant for registration as a national securities association was required to file a registration statement and exhibits with the Commission on Form X–15AA–1 in triplicate.[115] Every association applying for registration or registered as a national securities association was required to file with the Commission an amendment or supplement to its registration statement on Form X–15AJ–1 and an annual consolidated supplement to its registration statement on Form X–15AJ–2. These filings also had to be made in triplicate, at least one copy of which had to be signed and attested in the same manner as was required in the case of the original registration statement.[116] Every association applying for registration or registered as a national securities association was required to file Form X–15AJ–2 with the Commission promptly after March 1 of each year.[117]

The information collected by these forms was substantially similar: Form X–15AA–1, the registration statement for registration as a national securities association, requests 29 items of information and includes 3 exhibits; [118] Form X–15AJ–1, for filing any amendments or supplements to the registration statement, requests no information beyond that requested by Form X–15AA–1; [119] and Form X–15AJ–2, for filing the annual consolidated supplement to the registration statement, only requires one additional item of information, the inclusion of the date of the filing, which was not required by Form X–15AA–1.[120]

3. Requirements to Electronically File on Form 15A Information Previously Filed on Forms X–15AA–1, X–15AJ–1, and X–15AJ–2

a. Amendments to Rules 15Aa–1 and 15Aj–1

As discussed in detail below, the Commission is amending Rule 15Aa–1 and redesignating it as Rule 15aa–1,[121] redesignating Rule 15Aj–1 [122] as Rule 15aa–2, redesignating Form X–15AA–1 as Form 15A, amending the instructions to new Form 15A, and repealing Forms X–15AJ–1 and X–15AJ–2 in connection with the Commission's requirement that applicants and national securities associations electronically file on a duly executed Form 15A the information currently filed on Forms X–15AA–1, X–15AJ–1, and X–15AJ–2.[123] As stated above in the introduction to this section II, among other benefits, revising the forms relating to registration as a national securities association will increase efficiencies and decrease costs incurred by applicants for registration as a national securities association and by national securities associations.[124] In addition, the amendments will facilitate Commission review of the information to be provided on Form 15A.

To facilitate electronic filing of Form 15A, the Commission is amending Rule 15Aa–1 to require electronic filing. The amendments to Rule 15Aa–1 require that filings submitted pursuant to Rule 15Aa–1 be filed electronically on EDGAR in accordance with the requirements of Regulation S–T (17 CFR part 232). The amendments to Rule 15Aa–1 align the electronic filing requirements with changes being adopted under Rule 6a–1 (regarding Form 1 submissions) as well as the amendments to Rule 17ab2–1, which set forth the electronic filing requirements for Form CA–1 submissions.[125] As stated above, the Commission further is redesignating Rule 15Aj–1[126] as Rule 15aa–2.

b. Form 15A

The Commission is redesignating Form X–15AA–1 as Form 15A and is incorporating in Form 15A information related to amendments and supplements to the registration statement currently filed on Form X–15AJ–1 and information related to the annual consolidated supplement to the registration statement currently filed on Form X–15AJ–2. New Form 15A solicits information through prompts on the form that better organize the information that is currently collected through Forms X–15AA–1, X–15AJ–1, and X–15AJ–2, which should make it easier for respondents to comply with the filing requirements. Furthermore, exhibits are required to be electronically uploaded to EDGAR. Among other benefits as detailed in the Economic Analysis,[127] the amendments will increase efficiencies and decrease costs by consolidating substantially similar information currently filed on three paper forms into one electronic form. Because the information currently filed on the three forms will be captured entirely on Form 15A, the Commission also is repealing Forms X–15AJ–1 and X–15AJ–2.[128]

New Form 15A contains eleven sections. Preceding section I of Form 15A, the new form contains prompts

[113] *See* Exchange Act Rule 15Aj–1(a) and (b), 17 CFR 240.15Aj–1(a) and (b). These filings were submitted on Form X–15AJ–1, 17 CFR 249.802. *See* 17 CFR 240.15Aj–1(d) (requiring that such filings be made on Form X–15Aj–1).

[114] *See* Exchange Act Rule 15Aj–1(c), 17 CFR 240.15Aj–1(c). These filings were submitted on Form X–15AJ–2, 17 CFR 249.803. *See* 17 CFR 240.15Aj–1(d) (requiring that such filings be made on Form X–15Aj–2). Rule 15Aj–1(c)(1)(ii) also requires the filing of complete sets of the constitution, bylaws, rules, and related documents of the association, once every three years.

[115] *See* 17 CFR 240.15Aa–1.

[116] *See* 17 CFR 240.15Aj–1.

[117] *See* 17 CFR 240.15Aj–1(c).

[118] *See* 17 CFR 249.801.

[119] *See* 17 CFR 249.802. Form X–15AJ–1 and Form X–15AA–1 both require that if the association is registered, or applying for registration, as an affiliated securities association, the respondent list the registered national securities association with which the applicant or reporting association is affiliated. In addition, Form X–15AA–1 asked the applicant to state its reasons for believing that such affiliation will be granted. Form X–15AA–1 also required the applicant to estimate the annual dollar volume of transactions effected by members of the applicant association.

[120] *See* 17 CFR 249.803. Form 15A requires the inclusion of the date of the filing. Capturing the date (in a structured manner) will assist the Commission in determining compliance with the rule requirement that annual supplements be filed promptly after Mar. 1 of each year (17 CFR 240.15Aj–1(c)).

[121] *See* 17 CFR 240.15Aa–1.

[122] *See* 17 CFR 240.15Aj–1.

[123] The Commission is also making a technical modification to 17 CFR 232.101(a)(1) to include Form 15A in the list of filings required to be filed electronically. The Commission is making technical amendments to hyphenate ''up-to-date'' in three locations within Rule 15aa–2(c)(1)(ii), capitalize ''Items'' in Rule 15aa–2(b)(3) and on Form 15A, and to replace ''comprising'' with ''composing'' in the Form 15A General Instructions.

[124] *See supra* section II.

[125] *See also* amendments to Rule 6a–4.

[126] *See* 17 CFR 240.15Aj–1. The amendments to Rule 15Aj–1 will include updated references to relevant forms as well as updates to take into account electronic filing.

[127] *See infra* section X.C.1 (discussing benefits such as reducing the risk that non-electronic submissions are delayed and increasing the ability to run comparisons across reporting periods).

[128] The Commission proposed in 2004 to simplify and streamline the disclosure process for national securities associations by, among other things, redesignating Form X–15AA–1 and combining it with Forms X–15AJ–1 and X–15AJ–2. *See* Exchange Act Release No. 50699 (Nov. 18, 2004), *See* 69 FR 71126, 71155 (Dec. 8, 2004). The Commission did not adopt any final rule based on that proposal.

that require the association to note the basis for submitting the form. The prompts indicate whether the submission is an initial application filed pursuant to Rule 15aa–1 or an amendment or supplement—which currently are filed on Form X–15AJ–1 or X–15AJ–2, respectively—pursuant to new Rule 15aa–2. Section I is titled ''Organization,'' and it solicits the following information about the association: (i) its name; (ii) its statutory address, principal executive office address, and the addresses of its branch or district offices (or if there are no such branch or district offices, the association would check the ''Not Applicable'' box); (iii) the contact information of each person authorized to receive service of process and notices on behalf of the association from the Commission; (iv) the contact information for the association's counsel; (v) the association's form of organization (*e.g.,* corporation, sole proprietorship), date of organization, and name of State and reference to any statute thereof under which the association is organized; and (vi) information about its directors, officers, and certain other persons, and information about the members of its standing committees, or, in lieu of providing such information on new Form 15A, the association could provide a certification that the information can be obtained in a publication.[129] The information solicited in section I is the same as that solicited in Items 1 through 6 on current Form X–15AA–1.

Section I also requires the association to attach Exhibits A through D. Exhibit A requires the association to attach copies of its corporate governance documents (*e.g.,* constitution, bylaws), or in lieu of filing such documents, the association could provide a certification that the information may be obtained in a publication [130] or that the information is kept up to date and available to the Commission and the public upon request.[131] Exhibit A of new Form 15A solicits the same information as Exhibit A of current Form X–15AA–1 but reflects additional ways that the association could satisfy its filing obligation. Exhibit B requires the association to attach a balance sheet of the association as of a date within 30 days of the filing of an initial application, or promptly after the close of each fiscal year if the filing is a supplement, together with an income and expense statement for the year preceding such date or, if the association was organized during such year, for the period from the date of such organization to the date of such balance sheet. Exhibit B of new Form 15A solicits the same information as Exhibit B of current Form X–15AA–1. Exhibit C requires the association to provide a list, as of the latest practical date, of all of its members, and in lieu of supplementing the disclosed information regarding the names of members and their principal places of business when there is a change to that information—as is required under current Rule 15Aj–1(b)—the association is able to certify that changes in that information are reported in a record which is published at least once a month and promptly filed with the Commission, reflecting an additional way that the association could satisfy its filing obligation.[132] Exhibit C of new Form 15A solicits the same information as Exhibit C of current Form X–15AA–1, and adds the requirement that the association set forth the date of election to membership for each member elected to membership after December 31, 1994, which is currently required on Exhibit C of Form X–15Aj–2. Exhibit D of new Form 15A solicits the same information as Exhibit D of current Form X–15AA–1, requiring the association to electronically file any notices, reports, circulars, loose-leaf insertions, riders, new additions, lists or other records of changes when, as, and if such records are made available to members of the association, as required by new Rule 15aa–2(d)(2).

Sections II through IX of new Form 15A solicits information about specific association rules and other information that is currently solicited on Form X–15AA–1. Section II is titled ''Membership'' and requires the association to cite the specific rule(s) of the association addressing membership requirements, such as any rule restricting membership. Section II poses the same questions about the association's membership rules as Items 7 through 10 of current Form X–15AA–1. Section III is titled ''Representation of Membership'' and requires the association to cite the specific rule(s) of the association that assures fair representation of its members, which information is currently solicited in Item 11 of Form X–15AA–1. Section IV is titled ''Dues and Expenses'' and requires the association to cite the specific rule(s) of the association that provides for the equitable allocation of dues among its members to defray reasonable expenses of administration, which information is currently solicited in Item 12 of Form X–15AA–1.

Section V is titled ''Business Conduct and Protection of Members.'' This section requires the association to cite specific rule(s) of the association addressing the protection of members and member conduct with regard to principles of fair trade and dealing, such as the association rule(s) designed to prevent fraudulent and manipulative acts and practices and the rule(s) designed to provide safeguards against unreasonable profits or unreasonable rates of commissions or other charges. Section V also solicits information about association rule(s) addressing the disclosure of financial information or other business conduct requirements, such as the types of financial statements the association requires from its members, rules with respect to member insolvency, and rules requiring the keeping and preserving of books and records. Section V poses the same questions about business conduct and the protection of members as Items 13 through 23 of current Form X–15AA–1.

Section VI is titled ''Disciplining of Members'' and requires the association to cite the specific rule(s) of the association that addresses member discipline. Section VI poses the same questions about member discipline as Items 24 and 25 of current Form X–15AA–1. Section VII is titled ''Affiliated Associations'' and requires the association to cite the specific rule(s) of the association that provide for the admission of registered affiliated securities associations. Section VII poses the same question as Item 26 of current Form X–15AA–1. Section VIII is titled ''Miscellaneous'' and requires the association to cite the specific rule(s) of the association that (i) regulate the dealings of a member with any nonmember broker or dealer and (ii) provide a method for enforcing compliance on the part of its members with the rules of the association. Section VIII of new Form 15A poses the same questions as Items 27 and 28 of current Form X–15AA–1. Section IX is titled ''Additional Information for Registration as an Affiliated Securities Association'' and applies only to applications submitted for registration as an affiliated securities association. Section IX requires the applicant to provide the registered national securities association with which it seeks to be affiliated, its reasons for believing that such affiliation will be granted, and the estimated dollar volume of transactions effected by members of the applicant. Section IX of new Form 15A poses the

[129] *See* 17 CFR 240.15aa–2(c)(1)(ii)(A), as amended.

[130] *See id.*

[131] *See* 17 CFR 240.15aa–2(c)(1)(ii)(B), as amended.

[132] *See* 17 CFR 240.15aa–2(b)(3), as amended.

same questions as Items 29 and 30 of current Form X–15AA–1.

Section X requires the association to provide the contact information for its contact employee, and section XI provides the signature block and attestation. Consistent with the amendments to Form 1, Form 1–N, and Form CA–1, the entity filing new Form 15A consents to service of process to the individuals listed in section I, Item 3, which service of process could be via registered or certified mail. Section XI also requires the filer to represent that the information and statements contained in the form, including exhibits, schedules, or other documents, are current, true, and complete.

In addition, the Commission is amending the instructions for new Form 15A to include general directions for preparing and filing the form, describe the seven types of submissions that may be made under new Rules 15aa–1 and 15aa–2, and set forth the items, exhibits, and schedules required to be filed for each type of submission.

Finally, Form 15A requires the execution page to be filed in a custom XML data language specific to Form 15A. As with the other Covered SRO Forms, filers are able to input their execution page disclosures into a fillable web form that EDGAR will subsequently convert to custom XML. Structuring the execution page in custom XML should improve the ability to sort, filter, and otherwise organize Form 15A filings, enhancing the ability of the Commission to compare filings from year to year without creating significant additional burden on filers. The remainder of new Form 15A is not structured, however, because the very limited number of Form 15A filers and filings could mitigate the benefit derived from machine-readability of the disclosures contained therein.[133] The Commission did not receive comment on these proposals and for the reasons discussed above is adopting them as proposed.

D. Form CA–1

1. Relevant Statutory Framework

Section 17A of the Exchange Act governs the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.[134] Section 17A(b)(2) of the Exchange Act[135] states that a clearing agency may be registered under the terms and conditions provided thereunder and in accordance with the provisions of section 19(a) of the Exchange Act[136] by filing with the Commission an application for registration in such forms as the Commission, by rule, may prescribe containing the rules of the clearing agency and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the prompt and accurate clearance and settlement of securities transactions.

2. Pre-existing Requirements for Filing Form CA–1

Previously, the Commission adopted Rule 17ab2–1[137] and Form CA–1,[138] pursuant to section 17A(b)(2) of the Exchange Act, in order to set forth the requirements for registration as a clearing agency or for an exemption from registration as a clearing agency under section 17A. Rule 17ab2–1(a) states that an application for registration or for exemption from registration as a clearing agency or an amendment to any such application shall be filed with the Commission on Form CA–1, in accordance with the instructions thereto.[139]

Form CA–1 contains general instructions for preparing and filing Form CA–1 and instructions relating to the filing of amendments to a Form CA–1. It also includes an execution page and 19 exhibits. The Form CA–1 execution page requests general information from the applicant, as well as information regarding whether the clearing agency is exposed to loss if a participant fails to perform its obligations to the clearing agency. The exhibits to Form CA–1 also require an applicant clearing agency to provide information regarding business organization, financial position, operational capacity, access to its services, and, for those seeking an exemption from registration, a statement demonstrating why granting an exemption from registration would be consistent with the public interest, the protection of investors, and the purposes of section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

3. Comment Regarding Proposed Changes to Rule 17ab2–1 and Form CA–1

The Commission received one comment specifically addressing the proposed changes to Rule 17ab2–1 and Form CA–1[140] which was generally supportive of the proposal and described it as ''an effort[ ] to reduce the burden on registrants by modernizing filing requirements and forms to make submission more streamlined and cost-effective.''[141] The commenter focused on how the proposed Form CA–1 changes, inclusive of Rule 17ab2–1, would impact its requirements to make periodic amendments as a registered clearing agency. The commenter stated that it does not anticipate that the proposed structured data requirements will present obstacles or be burdensome for registered clearing agencies filing routine amendments to Form CA–1, but it did seek clarification on the requirement under Item 2 for submission of an email address. Specifically, the commenter sought to clarify whether a registrant may provide a dedicated (*i.e.,* general) email account in lieu of an individual person's email account in order to comply with this requirement. The commenter stated several benefits to the use of a dedicated email account, including allowing for routing to multiple individuals, uninterrupted monitoring even during personnel transitions, and protection from spamming.

The amendments permit either an individual or dedicated email account to be used. The email address requirement for the person in charge of the registrant's clearing agency activities is to facilitate communication with the person who is able to furnish information about the clearing agency activities. As long as the person in charge of the registrant's clearing agency activities is able to receive and send information at that email address, such an email address meets the purposes of that requirement. The change does not impose any requirements on how an applicant, registrant, or exempt clearing agency chooses to structure its internal email account system to follow a naming convention, manage access, or contain forwarding rules for emails to one or more persons. If the person who is in charge of the registrant's clearing agency activities can receive and send information through all the contact information provided on the Form CA–1, including the email account, this requirement will be met.

Consistent with the general support by the commenter for the benefits of the proposed changes to Rule 17Ab2–1 and Form CA–1, and the acknowledgement by the commenter that it does not create obstacles, for the reasons discussed in this section, the Commission is adopting

[133] *See infra* section IX.C.4.

[134] *See* 15 U.S.C. 78q–1.

[135] *See* 15 U.S.C. 78q–1(b)(2).

[136] *See* 15 U.S.C. 78s(a).

[137] *See* 17 CFR 240.17ab2–1.

[138] *See* 17 CFR 249b.200.

[139] *See* 17 CFR 240.17ab2–1(a).

[140] *See* Letter from Megan Malone Cohen, General Counsel and Corporate Secretary, Options Clearing Corporation (May 22, 2023) (''OCC 5/22/2023 Letter'').

[141] *See id.* at 1.

these changes as proposed, as further described below, because of their benefits.

4. Requirement to Electronically File Form CA–1

The Commission is revising certain aspects of Rule 17ab2–1, Form CA–1, and the instructions to Form CA–1 to require electronic filing of applications on Form CA–1 and subsequent amendments thereto by applicants, registered clearing agencies, and exempt clearing agencies. The revisions therefore require: (i) an applicant to file electronically its initial application on Form CA–1 for registration or for an exemption from registration and any subsequent amendments thereto; (ii) a registered clearing agency to file electronically any amendments to its Form CA–1 after being granted registration as a clearing agency; and (iii) an exempt clearing agency to file electronically any amendments to its Form CA–1 after being granted an exemption from registration as a clearing agency. As explained above in the introduction to section II, the revised rule and form revisions increase efficiencies and decrease costs related to the filing of Form CA–1 and amendments thereto by both registered and exempt clearing agencies, and the Commission's review of filed Forms CA–1 and amendments thereto.[142] In addition, while exempt clearing agencies are not subject to the SRO rule filing process under section 19(b) of the Exchange Act,[143] certain exempt clearing agencies are currently subject to electronic filing requirements under Regulation SCI.[144] Consequently, requiring these entities to file electronically Form CA–1 and amendments thereto is consistent with existing requirements for these entities under Regulation SCI.

5. Amendments to Rule 17ab2–1

The Commission is revising Rule 17ab2–1 to require electronic filing of Form CA–1. Specifically, the Commission is revising paragraphs (a), (d), (e), and (f) to reference the method of filing as being electronic, and is adding paragraph (g) to provide specific instructions on the method of filing electronically, including a requirement for an electronic signature (defined as an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters or characters composed of a name, executed, adopted or authorized as a signature). Additionally, paragraph (g) specifies a cutoff time of 5:30 p.m. eastern standard time or eastern daylight saving time for purposes of deeming which business day (defined to exclude certain days of the week, holidays, and closures) that a filing occurred. It also specifies that a filing would be deemed timely filed if it is required to be filed on a day that is not a business day and is filed on the next available business day. As stated above in the introduction to section II, among other benefits, revising the forms relating to registration as a clearing agency increases efficiencies and decreases costs incurred by applicants for registration as a clearing agency.

6. Amendments to Form CA–1 and the Form CA–1 Instructions

Electronic Form CA–1 solicits information through prompts on the form that should better structure the information collected. In addition, electronic Form CA–1 requires exhibits to be attached through a new exhibit table that is part of electronic Form CA–1. Further, all information posted on a website pursuant to electronic Form CA–1 must be free and accessible (without any encumbrances or restrictions) by the general public. Prompts are being added prior to section I of the form that require the registrant to note the basis for submitting Form CA–1. Specifically, electronic Form CA–1 requires the registrant to check a box stating one of the following: (i) whether the filing is an application pursuant to Rule 17ab2–1(a) and if it is, whether the registrant is applying for registration as a clearing agency [145] or requesting an exemption from registration as a clearing agency; (ii) whether the filing is an amendment to an initial Form CA–1 application pursuant to Rule 17ab2–1(d) prior to the Commission's grant of registration or an exemption from registration, or an update to an initial Form CA–1 application correcting information that is inaccurate, misleading, or incomplete, pursuant to Rule 17ab2–1(e); (iii) whether the filing is to provide the registrant's consent to an extension of the time period within which the Commission must take action on an initial Form CA–1 application and the date the extension expires; [146] (iv) whether the filing is to withdraw an initial Form CA–1 application prior to the Commission taking action on the application; (v) whether the filing is an amendment to Form CA–1 pursuant to Rule 17ab2–1(e) following Commission action to grant registration or an exemption; or (vi) whether the filing is required by a Commission order approving an application for exemption from registration as a clearing agency pursuant to section 17A(b)(1) of the Exchange Act. The Commission is requiring a registrant to indicate the type of filing to help facilitate the electronic filing of, and the Commission's review of, Form CA–1 submissions, including information required of an exempt clearing agency by an exemptive order.

The Commission also is modifying Form CA–1 to add a requirement for information about a contact employee. Amended Form CA–1 requires the name, title, email address, and telephone number of an employee prepared to respond to questions about the Form CA–1 submission.[147] The Commission is requiring information about a contact employee to facilitate communication between the registrant and the Commission. Similarly, the Commission is requiring the email address of the person in charge of the registrant's clearing agency activities to facilitate communication between the registrant and the Commission. As described above, the amendments permit the use of dedicated, general email accounts as long as the person in charge can send and receive information from the email provided to the Commission on the Form CA–1.[148]

In addition, revised Form CA–1 requires a registrant to electronically attach exhibits by using an exhibit table for all of the exhibits required by the current form, broken down into sections.[149] There are also sections that may be applicable to only certain

[142] *See supra* section I.B.

[143] *See* 15 U.S.C. 78s(a) and (b).

[144] *See* 17 CFR 242.1006. *See also* Exchange Act Release No. 73639 (Nov. 19, 2014), 79 FR 72251, 72258 (Dec. 5, 2014) (listing categories of SCI entities under Regulation SCI).

[145] If the registrant is applying for registration as a clearing agency, the changes to Form CA–1 require the registrant to indicate whether it requests the Commission to consider granting exemption from specified clearing agency requirements during a temporary registration period, in accordance with paragraph (c)(1) of Rule 17ab2–1 under the Exchange Act.

[146] *See* 15 U.S.C. 78s(a)(1)(B).

[147] The Commission is making the following technical changes: (1) capitalizing ''Item'' in the General Instructions to Form CA–1, Form CA–1, and in Rule 17ab2–1(e); (2) replacing ''comprising'' with ''composing'' and ''comprised'' with ''composed'' in the General Instructions to Form CA–1 and Form CA–1; (3) replacing ''comprising'' with ''composed of'' in Rule 17ab2–1(g)(2); and (4) in Section B of the General Instructions to Form CA–1, replacing the phrase ''The full middle name is required'' with ''The full middle name, if one exists, is required'' to be clear that a full name can be provided without a middle name when an individual does not have a middle name.

[148] *See supra* note 140 and accompanying text.

[149] Sections III through VII of Form CA–1, as amended, consist of exhibits relating to General Information, Business Organization, Financial Information, Operational Capacity, and Access to Services, respectively.

filings, with section VIII covering requests for an exemption from registration under Exhibit S, and section IX covering submission of any conditions, reports, notices or other submissions to the Commission required as directed in any order approving an application for exemption from registration as a clearing agency, under Exhibit T. Furthermore, adopted Form CA–1 preserves the current ability for a registrant to indicate that it is requesting confidential treatment with respect to certain of the disclosed information, and make a request for confidential treatment, under section X. In addition, as discussed further below in section VII, the Commission is adopting new paragraph (j) to Rule 24b–2 to require that a filer not omit the confidential portion from the material filed in electronic format on Form CA–1, but rather request confidential treatment of information provided in electronic format by completing section X of Form CA–1.

The Commission also is omitting Item 7(b) from the current Form CA–1. Item 7(b) solicits the following information: as of September 30, 1975, the dollar amount of the potential exposure of registrant, if any, as a result of differences (without offsetting long differences against short differences and without offsetting any suspense account items) in its clearing agency activities not resolved after 20 business days. On December 1, 1975, it became unlawful for any clearing agency—not subject to temporary exemptive relief under paragraph (b) of Rule 17ab2–1 that has since expired—to perform the functions of a clearing agency unless registered or exempt.[150] Before December 1, 1975, however, applicant clearing agencies may have performed the functions of a clearing agency prior to registering with the Commission or obtaining an exemption from registration. Therefore, to facilitate review by the Commission of applications on Form CA–1 by such clearing agencies, Item 7(b) of Form CA–1 requires disclosure, as of September 30, 1975, of the dollar amount of the potential exposure of the clearing agency from differences in its clearing agency activities not resolved after 20 business days. Information provided pursuant to this provision is no longer useful to the Commission because information on potential exposures to the clearing agency as of September 30, 1975, is stale data. Accordingly, it is no longer necessary to include Item 7(b) on Form CA–1.

The Commission also is revising the instructions to Form CA–1 to facilitate the electronic filing of Form CA–1. The revised form instructions do not contain the language in paragraph 2 under Part I of the current form stating that clearing agencies are required to file four completed copies of Form CA–1 with the Commission, or the language in paragraph 4 under Part I of the current form providing instructions relating to the requirements for copies of Form CA–1. Further, the revised instructions do not contain the language of paragraph 3 under Part I of the current form, which states that ''[t]he date on which a Form CA–1 is received by the Commission shall be the date of filing thereof if all the requirements with respect to filing have been complied with.'' This language would be inconsistent with the date-of-filing provision being added to Rule 17ab2–1, which provides for a 5:30 p.m. eastern standard time or eastern daylight saving time, whichever is currently in effect, on a business day, cutoff for a filing to be deemed filed on the day on which it is submitted.

In addition, existing paragraph 13 under Part III of the current form states that, if an item is amended, the registrant must repeat all unamended items as they last appeared on the page on which the amended item appears and must file four copies of the new page, each with updated and properly completed cover and execution pages. The requirement to repeat unamended items on certain pages relates solely to the filing of amended paper copies and, therefore, it is not relevant to the electronic filing process. The Commission is requiring a registered or exempt clearing agency to electronically file a full exhibit to help facilitate the performance of the Commission's regulatory functions because the Commission is able to review an amended exhibit to Form CA–1 in its entirety and more easily compare the revised exhibit against the prior version, particularly if numerous, non-consecutive pages are being amended. The Inline XBRL requirement for certain Form CA–1 exhibits further facilitates this comparison process, because Inline XBRL allows reviewers to create automated redline comparisons of an exhibit (or specific portion thereof) to a prior version of the same exhibit (or specific portion thereof). Accordingly, the Commission is deleting the reference to pagination that is currently in Item III, paragraph 13.

In addition, Form CA–1 and the instructions to Form CA–1 continue to require a registered or exempt clearing agency to consent to the service of notice of a proceeding under sections 17A or 19 of the Exchange Act involving the registrant. The language under which the registrant consents to service via registered or certified mail at the address provided on Form CA–1 would continue to be included in the electronically filed form.[151]

Finally, Form CA–1 requires a registered or exempt clearing agency to structure Schedule A (descriptive responses complementing the clearing agency's execution page disclosures) and Exhibits C (description of organizational structure), F (description of material pending legal proceedings), H (financial statements), J (description of services and functions), K (description of security measures and procedures), L (description of safeguarding measures and procedures), M (description of backup systems), O (description of, and reasons for, criteria governing access to services), R (prohibitions and limitations on access to services), and S (explanation of requested exemption) in Inline XBRL. The execution page and Exhibits A (persons controlling management or policies, but not the copies of written agreements with such persons), B (officers, managers, and individuals occupying similar positions), D (persons controlled by or under common control with the clearing agency, and description of control relationship), E (dues, fees, and other charges for clearing activities, but not the copies of the constitution, articles of incorporation or association, bylaws, rules procedures, and instruments corresponding thereto), I (office addresses and activities performed in each office), N (participants or applicants for participation), and Q (schedule of fees for services rendered by participants) also must be structured, albeit in a custom XML data language specific to Form CA–1 rather than in Inline XBRL.

The copies of existing documents filed with Exhibits A (copies of written agreements with control persons), E (copies of the constitution, articles of incorporation or association, bylaws, rules, procedures, and instruments corresponding thereto), G (copies of contracts with exchanges, national securities associations, and securities

[150] Paragraph (b) of Rule 17ab2–1 provides any clearing agency that filed an application with the Commission on or before Nov. 24, 1975, with a temporary exemption from the registration provisions of section 17A(b) of the Exchange Act and the rules and regulations thereunder until the Commission either grants registration, denies registration, or grants an exemption from registration. *See* 17 CFR 240.17ab2–1(b).

[151] The provision on page 3 of the Form CA–1 allowing for service of any civil action pursuant to confirmed telegram is deleted.

markets), P (copies of contracts governing subscription terms), and T (submissions to the Commission required as directed in any approval order) are filed as unstructured PDF documents.

Structured Data Requirements for Form CA-1

Inline XBRL	Schedule A, Exhibits C, F, H, J, K, L, M, O, R, S
Custom XML	Execution page, Exhibits A (in part), B, D, E (in part), I, N, Q
Unstructured PDF	Exhibits A (in part), E (in part), G, P, T

The structuring requirements should facilitate access to the clearing agency's disclosures (enabling, for example, more efficient retrieval of only those disclosures filed by a subset of clearing agencies over particular reporting periods) and analysis (such as by comparing individual disclosures or sets of disclosures across clearing agencies and time periods). This will benefit market participants through enhanced oversight of clearing agencies. Market participants (such as broker-dealers, analysts, and other clearing agencies) will also benefit from direct use of the machine-readable disclosures on Form CA–1. For example, institutional investors could leverage the machine-readability of Exhibit J to run automated redlines of a clearing agency's safeguarding procedure descriptions from prior periods, thereby detecting any significant procedural changes that could raise concern.

Without the structured data requirements, these types of analyses would need to be performed manually, such as by gathering the current and former descriptions of safeguarding procedures for each exchange and entering them all into databases, resulting in a significantly less efficient and precise process. In addition, the structured data requirement enables EDGAR to perform technical validations (*i.e.,* programmatic checks to ensure the documents are appropriately standardized, formatted, and complete) upon intake of the Form CA–1 disclosures, thus potentially improving the quality of the filed data by decreasing the incidence of non-substantive errors (such as the omission of values from fields that should always be populated).

The nature and extent of such benefits may vary based on the content of each Form CA–1 Exhibit. As discussed in the Economic Analysis, studies of XBRL requirements for public operating company financial statements indicate a number of benefits for investors and market participants.[152] The probability that, and extent to which, these particular benefits arise from structured Form CA–1 disclosures could be heightened for Exhibit H, which likewise includes structured financial statements. In addition, the particular benefits of structuring data likely vary based on the type of disclosures included in each particular Exhibit. Structured numerical disclosures, such as those included on Exhibit H, lend themselves to mathematical functionality, such as the calculation of key ratios or the identification of extreme statistical outliers. Structured textual disclosures, such as those that included on Exhibit K, lend themselves to period-over-period redline comparisons, targeted keyword searching, and more sophisticated sentiment analysis.

After consideration, the Commission, as proposed, is requiring Inline XBRL for certain exhibits to Form CA–1 and custom XML for others, because each data language is better suited for particular types of disclosures. Exhibit H requires disclosure of financial statements, and Inline XBRL was designed to accommodate financial statement information, including the particular metadata (*e.g.,* the relevant fiscal period, whether the line item is on the balance sheet, whether the line item is a credit or debit) that must be linked to each data point within the financial statements to fully convey its semantic meaning to a machine reader. Exhibits C, F, J, K, L, M, O, R, and S require narrative disclosures on topics such as the clearing agency's services, security, backup systems, and criteria governing access to services; whereas custom XML data languages only have the capacity to accommodate brief narrative descriptions, Inline XBRL can accommodate longer narrative descriptions with presentation capabilities that preserve human-readability while maintaining machine-readability.

The execution page of Form CA–1, Exhibits A (in part), B, D, E (in part), I, N, and Q do not require such content. For these disclosures, the use of custom XML is preferable to Inline XBRL, because it yields smaller file sizes and therefore enables more streamlined processing of the information.[153] Requiring custom XML rather than Inline XBRL for these disclosures is also preferable because it will enable EDGAR to generate fillable web forms that permit clearing agencies to manually input their disclosures into the form fields, rather than structure their disclosure in the custom XML data language themselves. This added flexibility could ease the burden of compliance on clearing agencies in some instances, although clearing agencies may have the requisite sophistication to encode the disclosures in custom XML themselves without relying on fillable web forms.

The Commission is requiring clearing agencies to file copies of existing documents, such as copies of bylaws, written agreements, and contracts governing subscription terms, as unstructured PDF attachments. The Commission is not requiring clearing agencies to retroactively structure these existing documents, which were prepared for purposes outside of fulfilling the Commission's disclosure requirements, because such a requirement will likely impose costly compliance burdens on clearing agencies that may not be justified in light of the commensurate informational benefits associated with more efficient disclosure use. Thus, structured data requirements are not warranted for these copies of existing documents.

One commenter agreed that the proposed structured data requirements for Form CA–1 would not present obstacles or be burdensome for clearing agencies.[154] Another commenter recommended that all items in Form CA–1 be submitted in Inline XBRL, except for copies of existing documents which could then be submitted in PDF format and linked via tags in an XBRL

[152] *See infra* section X.C.1.b.

[153] *See also infra* section X.E.4 (discussing other structured data languages that would result in smaller file sizes than Inline XBRL, and the reasons why the Commission has not required the use of such data languages under the rule amendments).

[154] *See* OCC 5/22/2023 Letter at 2.

document.[155] The commenter stated that requiring a single data language would lead to efficiencies in both reporting and data extraction and identified Inline XBRL as the most suitable option for the information reported on Form CA–1, because much of it is financial and narrative.[156] The Commission agrees with the commenter that Inline XBRL is suitable for financial and narrative data, and is therefore requiring Inline XBRL for those Form CA–1 exhibits with financial disclosures (*i.e.,* Exhibit H) and extended narrative disclosures (*i.e.,* Schedule A and Exhibits C, F, J, K, L, M, O, R, and S). However, the Commission disagrees with the commenter that an Inline XBRL requirement would be more suitable than a custom XML requirement for the other structured Form CA–1 disclosures.

In that regard, the commenter stated that, whereas there is a large competitive marketplace of tools to support XBRL preparation which can be leveraged for any reporting application, use of a custom XML schema for some Form CA–1 disclosures will require the creation of a new application specifically designed for a 2-step data extraction process that involves preparing and extracting data using a custom XML schema.[157] The Commission disagrees with the characterization by the commenter that a new application would need to be specifically designed to prepare data using that schema. Clearing agencies will have means of complying with Form CA–1 custom XML requirements that do not involve the creation of a new application. First, clearing agencies will be able to create custom XML CA–1 documents internally without the use of custom applications; because, similar to exchanges as discussed above, clearing agencies are sophisticated entities that likely have experience encoding disclosures using custom XML schemas without needing to create new custom applications. Second, clearing agencies (like exchanges) will have the option to forgo creating structured custom XML Form CA–1 exhibits altogether, and instead input their disclosures into a fillable web form that EDGAR will make available to Form CA–1 filers. Clearing agencies that use the fillable form option will similarly not need to procure or pay for custom commercial applications to prepare the custom XML data required by those Form CA–1 exhibits. In either of the above cases, clearing agencies will be able to comply with the custom XML Form CA–1 requirements without any need for creation of a new application specifically designed to prepare data using the custom XML schema for Form CA–1 exhibits.

The commenter also stated that it would be more efficient for data users to extract data from Form CA–1 if all the data were structured in Inline XBRL, because this would result in a one-step extraction process rather than a two-step extraction process. The Commission agrees with the commenter that using different structured data languages for Form CA–1 will add an additional step to the extraction of the structured data (making it a one-step extraction process rather than a two-step extraction process), because data users will need to run conversion processes to incorporate the Inline XBRL disclosures on Form CA–1 into the same datasets and applications as the custom XML disclosures filed on Form CA–1. Nonetheless, the streamlined data processing associated with the smaller sizes of the custom XML exhibits and execution page, as described earlier in this section, justify any such drawbacks.

With respect to the execution page, the commenter referenced the Commission's existing requirements for public companies to tag cover page information in periodic reports in Inline XBRL, and questioned why the Commission has chosen not to follow that precedent for Form CA–1.[158] Several other existing Commission disclosure forms, such as electronic Form X–17A–5 Part III, electronic Form 17–H, and the SBSE Forms, use custom XML execution pages.[159] The Commission is similarly requiring custom XML rather than Inline XBRL for the Form CA–1 execution page because while Inline XBRL is particularly suitable for financial statements or extended narrative disclosures, custom XML is comparably suitable for the checkboxes, brief text strings, and limited numeric disclosures included on the Form CA–1 execution page (much like the execution pages for electronic Form X–17A–5 Part III, electronic Form 17–H, and the SBSE Forms). Given the comparable technical suitability of custom XML and Inline XBRL for the disclosures in the Form CA–1 execution page, the smaller file sizes and more streamlined processing of custom XML data compared to Inline XBRL data, the custom XML requirement for the Form CA–1 execution page is appropriate.[160]

E. Form 19b–4(e)

1. Relevant Statutory Framework

Section 19(b) of the Exchange Act, as amended, requires each SRO to file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule, or any proposed change in, addition to, or deletion from the rules of such SRO (collectively, a ''proposed rule change'') accompanied by a concise general statement of the basis and purpose of such proposed rule change.[161] Rule 19b–4(e)(1) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change under the Exchange Act if the Commission has approved, pursuant to section 19(b) of the Exchange Act,[162] the SRO's trading rules, procedures, and listing standards for the product class that include the new derivative securities product, and the SRO has a surveillance program in place for such product class.[163]

2. Background of Rule 19b–4(e)

As discussed above, Rule 19b–4(e)(1) under the Exchange Act provides that the listing and trading of a new derivative securities product [164] by an SRO shall not be deemed a proposed rule change subject to certain conditions. The Commission determined that, when it has approved an SRO's trading rules, procedures, and listing standards for the product class that include the new derivative securities product, and the SRO has an adequate surveillance program in place for such product class, the listing and trading of the new derivative securities product would be ''reasonably and fairly implied'' by the SRO's existing trading rules, procedures, and listing standards, and therefore, would not be deemed a proposed rule change under Rule 19b–4(c)(1).[165]

[155] *See* XBRL Letter at 4–5. The commenter agreed that there would not be sufficient value in retroactively structuring existing documents.

[156] *See id.*

[157] *See id.*

[158] *See* XBRL Letter at 5; 17 CFR 232.406.

[159] *See EDGAR Filer Manual, Volume II* at 8.2.20, 8.2.21, and 8.2.22.

[160] *See also supra* section II.A.3 and *infra* section X.E.4 (discussing other structured data languages that would result in smaller file sizes than Inline XBRL, and the reasons why the Commission has not required the use of such data languages under the rule amendments).

[161] *See* 15 U.S.C. 78s(b).

[162] *See* 15 U.S.C. 78s(b).

[163] *See* 17 CFR 240.19b–4(e)(1).

[164] Rule 19b–4(e) defines a new derivative securities product as ''any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.'' *See* 17 CFR 240.19b–4(e).

[165] *See* Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998) (''Rule 19b–4(e)

Continued

For purposes of Rule 19b–4(e)(1), SROs have submitted, and the Commission has approved pursuant to section 19(b)(2) of the Exchange Act, trading rules, procedures, and listing standards for several types of new derivative securities products including, for example, exchange-traded funds, index-linked securities and other exchange-traded structured products, and narrow and broad-based index options.[166]

As expressed in the Rule 19b–4(e) Adopting Release, the Commission adopted Form 19b–4(e) in order for the Commission to maintain an accurate record of all new derivative securities products traded on the SROs in order to notify the Commission when an SRO begins to trade a new derivative securities product not required to be submitted as a proposed rule change to the Commission for approval.[167] The Commission also stated that it would make Forms 19b–4(e) public.[168] At the time of the adoption of Rule 19b–4(e), the Commission estimated the new rule would eliminate approximately 45 SRO rule filings each year,[169] and the information regarding new derivative securities products required pursuant to Rule 19b–4(e) was required to be submitted using a paper Form 19b–4(e).

3. Previous Requirements for Filing Form 19b–4(e)

Under Rule 19b–4(e)(2)(ii) prior to these amendments, SROs were required to submit Form 19b–4(e)[170] to the Commission within five business days after commencement of trading a new derivative securities product.[171] In addition, pursuant to the instructions for completing Form 19b–4(e), SROs were required to submit an original and nine paper copies of a duly executed Form 19b–4(e) with the Commission.[172]

4. Rescission of Form 19b–4(e)

The Commission is amending Rule 19b–4 to rescind Form 19b–4(e) and instead require SROs to post on their internet websites the information previously included on Form 19b–4(e) as proposed. More specifically, an SRO will be required to post on its public internet website, within five business days after commencing the trading of a new derivative securities product, the information required in current Part I, Items 2 through 9 of Form 19b–4(e) for that product: [173] (a) type of issuer of new derivative securities product (*e.g.,* clearinghouse, broker-dealer, corporation, etc.); (b) class of new derivative securities product; (c) name of underlying instrument; (d) if the underlying instrument is an index, state whether it is broad-based or narrow-based; (e) ticker symbol(s) of new derivative securities product; (f) market(s) upon which securities composing the underlying instrument trade; (g) settlement methodology of new derivative securities product; and (h) position limits of new derivative securities product (if applicable). This information must be provided using the most recent versions of an XML schema and the associated PDF renderer that will be published on the Commission's website.[174] This information generally should be available at a prominently posted hyperlink on the SRO's website that is free and accessible (without any encumbrances or restrictions) by the general public.

As was previously required in Part II of Form 19b–4(e), an SRO is required to provide on its website a representation by a duly authorized SRO official that the governing body of the SRO has duly approved, or has duly delegated its approval to such official for, the listing and trading of the new derivative securities product according to its relevant trading rules, procedures, surveillance programs, and listing standards to assure that such products are being listed and traded in accordance with the SRO's obligations under Rule 19b–4(e), as well as an email address to contact that official. The requirement to provide an email address for the SRO contact employee should expedite communications between Commission staff and the relevant SRO. Any SRO that relies on Rule 19b–4(e) to list and trade a new derivative securities product continues to be subject to Rule 19b–4(e)(2)(i), which requires the SRO to maintain at its principal place of business a file, available to Commission staff for inspection, of all relevant records and information pertaining to each new derivative securities product traded pursuant to Rule 19b–4(e) for a period of not less than five years, the first two years in an easily accessible place, as prescribed in Rule 17a–1 under the Exchange Act.[175] Thus, the SRO trading a new derivative securities product needs to maintain the relevant records and information regarding the new derivative securities product to comply with the recordkeeping and reporting requirements of Rule 19b–4(e). As under the previous rule, and as contemplated in the adoption of the current rule, the Commission will review SRO compliance through its routine inspections of SROs.[176]

The electronic filing requirement should provide the same information for the Commission and the public as was previously provided by Form 19b–4(e) without necessitating the additional steps of submitting a paper form containing that information with the Commission. Among other benefits, electronic filing should increase efficiencies and decrease costs related to both the submission of Form 19b–4(e) by an SRO and the Commission's processing of submitted Forms 19b–4(e). As discussed above, since the Commission adopted Rule 19b–4(e), technology has evolved significantly and the internet has played an increasingly vital role in information distribution.[177] During this period, the Commission has encouraged the dissemination of information electronically via the internet and other automated systems and services.[178] In

Adopting Release''). *See also* 17 CFR 240.19b–4(c)(1).

[166] *See, e.g.,* Exchange Act Release Nos. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (SR–Amex–2000–14) (approving generic listing standards for exchange traded funds called Portfolio Depositary Receipts and Index Fund Shares); 45718 (Apr. 9, 2002), 67 FR 18965 (Apr. 17, 2002) (SR–NYSE–2002–07) (approving generic listing standards for Trust Issued Receipts); 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR–NYSE–2007–27) (approving generic listing standards for Index-Linked Securities); 48405 (Aug. 25, 2003), 68 FR 52257 (Sept. 2, 2003) (SR–ISE–2003–05) (approving generic listing standards for narrow-based index options); 78397 (June 22, 2016), 81 FR 49320 (July 27, 2016) (SR–NYSEArca–2015–110) (approving generic listing standards for Managed Fund Shares); and 88566 (Apr. 6, 2020), 85 FR 20312 (Apr. 10, 2020) (SR–CboeBZX–2019–097) (approving generic listing standards for Exchange-Traded Fund Shares).

[167] *See* Rule 19b–4(e) Adopting Release, 63 FR at 70963.

[168] *See id.* at 70964 n.139 (''Form 19b–4(e) will be publicly available through the Commission's Public Reference Room. In addition, the Commission will endeavor to make the Forms available on the Commission's website.'').

[169] *See* Rule 19b–4(e) Adopting Release, 63 FR at 70964.

[170] *See* 17 CFR 249.820.

[171] *See* Rule 19b–4(e)(2)(ii). Although Rule 19b–4(e) relates to the listing and trading of new derivative securities products by SROs, the only SROs that list and trade new derivative securities products and file Forms 19b–4(e) to the Commission are national securities exchanges.

[172] *See* Items II and III of the Instructions for Completing Form 19b–4(e), 17 CFR 249.820.

[173] Part I, Item 1, ''Name of Self-Regulatory Organization Listing New Derivative Securities Product,'' will not be necessary to include because the table of new derivative securities products will be on the website of the SRO that has listed and is trading the new derivative securities product, so the identity of the listing SRO will be self-evident. The Commission also is making technical amendments to remove an extraneous ''s'' at the end of ''trade'' and to replace ''comprising'' with ''composing'' in the text of Rule 19b–4(e)(2)(ii)(F).

[174] *See* 17 CFR 240.19b–4(e)(2)(ii), as amended.

[175] *See* 17 CFR 240.17a–1.

[176] *See* Rule 19b–4(e) Adopting Release, 63 FR at 70963.

[177] *See supra* note 14.

[178] *Id. See also supra* note 15.

addition, the Commission now receives thousands of Forms 19b–4(e) per year from the SROs, rather than the 45 per year as stated in the Rule 19b–4(e) Adopting Release, each of which is submitted to the Commission and then must be made public individually by the Commission,[179] and therefore the submissions require, in the aggregate, additional time to process before the information contained in those Forms becomes available for Commission review and also publicly available.[180] Requiring SROs to post the information contained in the current Form 19b–4(e) on their websites accomplishes the goal outlined in the Rule 19b–4(e) Adopting Release, for the Commission to maintain accurate information regarding these new derivative securities products, while ensuring that information remains publicly available.[181] In addition, requiring SROs to post that information within 5 business days after commencement of trading a new derivative securities product, as the previous rule required, will continue to allow the Commission to determine that an SRO has properly relied on the rule and continue to do so in a timely fashion.[182] This is appropriate given the large number of Forms 19b–4(e) that are submitted currently as well as the nature of the information contained in those Forms, which is highly standardized. Providing that information on the relevant SRO's publicly available website renders that information more readily accessible to both the Commission and the public than submitting numerous Forms 19b–4(e) had done previously and has the added benefit of eliminating the two-step process of an SRO submitting a Form 19b–4(e) and then that Form being made public through the Commission. In addition, because that information is subject to the relevant SRO's books and records obligations [183] and subject to the Commission's examination and inspection authority,[184] the accuracy of the records for Commission review is commensurate with the accuracy of the information on the Forms 19b–4(e) submitted to the Commission under the previous rule.

One commenter, who agreed with requiring Form 19b–4(e) to be prepared in machine-readable form, stated that Forms 19b–4(e) should instead be submitted to EDGAR (or, alternatively, that the Commission or another party should create a registry where links to these documents can be posted).[185] The commenter stated that this would facilitate use for market participants, who would be able to collect all needed data in one location rather than set up mechanisms to track new form postings on multiple websites.[186] The commenter stated that such an approach would be unlikely to increase the reporting burden for SROs.[187]

The Commission disagrees that the 19b–4(e) information should be submitted to EDGAR rather than posted to SRO websites. The Commission receives thousands of Forms 19b–4(e) per year from the SROs and expects that the products subject to Rule 19b–4(e) will continue to number in the thousands going forward. In addition, the information to be provided under Rule 19b–4(e) is limited to no more than eight basic information items, including ticker symbol, type of issuer, and whether the underlying instrument is a broad or narrow-based index. Given the quantity of these products and the limited set of information required to be provided under Rule 19b–4(e) for each new product, requiring EDGAR submission for each of these products would be an unduly burdensome process compared to SRO website posting, which will provide a readily accessible interface for market participants to access this data without necessitating submission to EDGAR. Similarly, a registry of links would add an unnecessary layer of complexity in making the information publicly available when many market participants are already familiar with accessing SROs' public websites, such as those the SROs would have in place under the amended rule. For these reasons, the amended rules do not include a requirement to centrally submit Rule 19b–4(e) information to EDGAR, nor do they require the creation of a registry of links to Rule 19b–4(e) postings.

The same commenter also stated that XBRL should be used in place of custom XML for the Rule 19b–4(e) information.[188] According to the commenter, an XBRL requirement for the Rule 19b–4(e) information would improve accessibility to the data because it can be extracted by the same tools used for other reported data prepared in XBRL, and where derivatives are reported in other filings by SEC reporting entities, the data (which includes facts that are already defined as concepts in other taxonomies) may be easily linked and interoperable.[189] The Commission disagrees with the commenter that XBRL is more suitable than custom XML for the Rule 19b–4(e) information. While XBRL is particularly suitable for financial statements and extended narrative disclosures, custom XML is comparably suitable for the discrete set of brief text strings that Rule 19b–4(e) requires, and results in smaller file sizes and therefore more efficient data processing than XBRL does. The rule amendments require custom XML rather than XBRL for the Rule 19b–4(e) information because the more efficient data processing enabled by custom XML justifies forgoing the XBRL interoperability benefit that the commenter describes.

Finally, the same commenter encouraged the use of the Legal Entity Identifier (''LEI'') for the entity responsible for the derivative product and a Financial Instruments Global Identifier (''FIGI'') for the derivative identifier.[190] The commenter stated that these two identifiers are both open, non-proprietary identifiers (for legal entities and securities, respectively), and would be extremely helpful for data users in evaluating business and investment risk.[191] The Commission does not disagree that the LEI and the FIGI would provide benefits for the open and precise identification of legal entities and securities disclosed pursuant to Rule 19b–4(e). However, the Commission is not modifying the content of Form 19b–4(e) to include an LEI or FIGI requirement under the amended rules because such changes are beyond the scope of the amendments which are intended to provide for eliminating paper submission of the information provided

[179] *See id.* at 70964 n.139.

[180] *See* FR Doc. 2022–17308, 87 FR 49894 (Aug. 12, 2022) (Request to OMB for extension of Rule 19b–4(e) and Form 19b–4(e); SEC File No. 270–447; OMB Control No. 3235–0504) (identifying 2,331 Forms 19b–4(e) submitted to the Commission based on the average annual number of Forms 19b–4(e) submitted in 2019, 2020, and 2021).

[181] *See* Rule 19b–4(e) Adopting Release, 63 FR at 70963, 70964 n.139.

[182] *See* 17 CFR 240.19b–4(e)(2)(ii).

[183] *See* 17 CFR 240.17a–1.

[184] *See* Rule 19b–4(e) Adopting Release, 63 FR at 70963.

[185] *See* XBRL Letter at 6.

[186] *See id.*

[187] *See id.*

[188] *See id.*

[189] *See id.*

[190] *See id.*

[191] *See id.* Another commenter specifically stated that the Commission should require LEI to be disclosed on the notices that Exchange Act Rule 15fi–3(c) requires, because structured data is more useful when it contains a consistent identifier, like the LEI, instead of varying names or identifiers. According to the commenter, the absence of an LEI requirement on the notices will lead to inconsistent submissions that lack comparability. *See* Letter from Stephan Wolf, CEO GLEIF (May 22, 2023) (''GLEIF Letter''). The Commission responds to this comment in a subsequent section of this release. *See infra* section V.C.2.

on Form 19b–4(e), rather than making changes to information required to be disclosed such as the replacement or supplementation of SRO names and ticker symbols for new derivatives securities products with LEI or FIGI requirements.

Thus, for the reasons discussed above, the Commission is rescinding Form 19b–4(e) and is adopting the amendments to Rule 19b–4(e) as proposed.

F. Rule 19b–4(j) and Form 19b–4

1. Relevant Statutory Framework

Section 19(b) of the Exchange Act, as amended, requires each SRO to file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule, or any proposed change in, addition to, or deletion from the rules of such SRO (collectively, a ''proposed rule change'') accompanied by a concise general statement of the basis and purpose of such proposed rule change.[192] Rule 19b–4, subject to certain exceptions, requires an SRO to submit each proposed rule change by electronically filing Form 19b–4.[193]

2. Rule Change

The Commission is adopting the rule change as proposed to remove the requirement under 17 CFR 240.19b–4(j) (''Rule 19b–4(j)'') that the signatory to an electronically submitted Form 19b–4 manually sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed form within the electronic filing, execute that document before or at the time the rule filing is electronically submitted, and retain that document for its records in accordance with Rule 17a–1. The Commission also is removing the related language in Form 19b–4 and the instructions to Form 19b–4 that a duly authorized officer of the SRO manually sign one copy of the completed Form 19b–4 and that the manually signed signature page be maintained pursuant to section 17 of the Exchange Act.[194] These amendments are appropriate because the manual signature requirement under Rule 19b–4 is redundant and therefore unnecessary given that Form 19b–4, which is filed electronically, already requires an electronic signature.[195] The comments the Commission received on these amendments to Rule 19b–4, Form 19b–4, and the related instructions were generally supportive of these amendments.[196]

G. Conforming Technical Amendment to Rule 202.3(b) Under the Exchange Act

As discussed above, the Commission is making a technical amendment to conform its Informal and Other Procedures to the changes herein to Rules 6a–1, 6a–2, and 6a–3 with respect to Form 1 filings and to Rule 6a–4 with respect to Form 1–N filings, as proposed. Specifically, the Commission is making conforming changes to Rules 202.3(b)(2) and (b)(3) of its Informal and Other Procedures [197] to clarify that defective applications on Form 1 and notices on Form 1–N, respectively, must be returned to the Filer,[198] and must not be held by the Commission.[199] While Rules 202.3(b)(2) and (b)(3) currently permit the Commission to hold defective applications on Form 1 and defective notices on Form 1–N, holding such applications or notices serves no purpose, as defective Form 1 and Form 1–N filings do not contain sufficient information for the Commission and its staff to review such applications and notices.[200] In such situations, it is appropriate to return the defective filings to the Filers so that the Filers may correct the defective filings. Additionally, Rules 202.3(b)(2) and (b)(3) [201] are being amended to update the name of the Division of Trading and Markets from the previously used Division of Market Regulation.

III. Requirements for Clearing Agencies To Electronically File Covered Supplemental Materials

A. Preexisting Rule 17a–22

Prior to the amendments adopted in this release, preexisting Exchange Act Rule 17a–22 required that within 10 days after issuing, or making generally available, to its participants or to other entities with whom it has a significant relationship, such as pledgees, transfer agents, or SROs, any material (including, for example, manuals, notices, circulars, bulletins, lists or periodicals), a registered clearing agency shall file three copies of such material with the Commission.[202] A registered clearing agency for which the Commission is not the ARA at the same time had to file one copy of such material with its ARA.[203] Since the Updated Staff Statement was issued, registered clearing agencies have been submitting electronic copies of filings required under Rule 17a–22 to the Commission through a dedicated email inbox, rather than submitting paper copies.[204]

B. Amended Rule 17a–22

The Commission is amending Rule 17a–22, as proposed, to: (i) replace the requirement to file supplementary materials with the Commission or an ARA in paper form with a requirement to prominently post such materials on the clearing agency's internet website; and (ii) reduce the timeframe for compliance with the rule from 10 days to 2 business days for the posting requirement.[205] By replacing the paper

[192] *See* 15 U.S.C. 78s.

[193] *See* 17 CFR 240.19b–4(b).

[194] This amendment is for purposes of filing with the Commission only and does not affect the requirements with which certain SROs subject to oversight by other regulatory agencies must continue to comply. Currently, under Section F of the instructions to Form 19b–4, a registered clearing agency for which the Commission is not the appropriate regulatory agency also shall file with its appropriate regulatory agency three copies of the form, one of which shall be manually signed, including exhibits. A clearing agency that also is a designated clearing agency shall file with the Federal Reserve three copies of any form containing an advance notice, one of which shall be manually signed, including exhibits; provided, however, that this requirement may be satisfied instead by providing the copies to the Federal Reserve in an electronic format as permitted by the Federal Reserve. The Municipal Securities Rulemaking Board (''MSRB'') also shall file copies of the form, including exhibits, with the Federal Reserve, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. These requirements, all promulgated pursuant to 15 U.S.C. 78q(c)(1), remain in effect.

[195] The Commission also is making a technical amendment to replace ''comprising'' with ''composing'' in the text of Rule 19b–4(j).

[196] *See, e.g.*, Letter from Michael Wichkoski (June 17, 2023) (''Wichkoski Letter''); OCC 5/22/2023 Letter; Letter from Lars Wohlfahrt (Apr. 17, 2023) (''Wohlfahrt Letter'').

[197] *See* 17 CFR 202.3(b)(2) and (3).

[198] For purposes of this Rule, the Commission would return Form 1 and Form 1–N filings to Filers by deleting the application or notice from EDGAR and sending an email to the contact person notifying the Filer: (i) that the application or notice was deleted from EDGAR and thus is considered as being returned under Rule 202.3(b)(2) or Rule 202.3(b)(3), respectively, of the Commission's Informal and Other Procedures, as applicable; (ii) of the reason(s) for such return; and (iii) that, therefore, the application or notice is not considered filed with the Commission.

[199] For purposes of this rule, an application on Form 1 or a notice on Form 1–N is deemed defective if: (i) it was not properly signed; (ii) it did not contain the required information, including exhibits; or (iii) the information provided was presented in a manner that would make it difficult for the Commission and its staff to conduct its review of the application or notice. *See* 17 CFR 249.1 and 249.10.

[200] *Id.*

[201] *See* 17 CFR 202.3(b)(2) and (3).

[202] *See* 17 CFR 240.17a–22.

[203] *See id.*

[204] *See supra* note 7.

[205] In consultation with the Federal Reserve, the Commission is removing the obligation to send an additional paper copy to a clearing agency's ARA from Rule 17a–22. If the supplemental materials are prominently posted on the clearing agency's internet website, all its regulatory authorities will have access to them, removing the need to file an additional paper copy. Separate from any

filing requirement for registered clearing agencies with an electronic posting requirement via the clearing agency's internet website, the amendment aligns with the Commission's larger-scale objective tied to its mission of enhancing the efficiency and effectiveness of its regulatory regime for registered clearing agencies under the Exchange Act.

Rule 17a–22, as amended, requires that within 2 business days after issuing, or making generally available, to its participants or other entities with whom it has a significant relationship, any material (including, for example, manuals, notices, circulars, bulletins, lists or periodicals) that is not otherwise required to be posted on its internet website pursuant to any requirement under section 19(b) of the Exchange Act or the rules thereunder, a registered clearing agency shall prominently post such material on its internet website.

The Commission received one comment letter specifically addressing the proposed amendments to Rule 17a–22.[206] In that comment letter, an equity derivatives clearing agency registered with the Commission, OCC, stated that it supports the proposed amendments to Rule 17a–22 because the rule, as amended, removes duplicative and administratively burdensome requirements. However, OCC suggests clarification on the scope of supplemental materials that are made ''generally available.'' [207] As discussed in more detail in the relevant sections below, the Commission is not making further changes to Rule 17a–22, as proposed, but is providing certain clarification to address OCC's concern.

1. Two-Day Timeframe for Compliance

Reducing the notice timeframe from 10 days to 2 business days is reasonable and appropriate for three reasons. First, the timeframe of 2 business days helps ensure the timely dissemination of information to affected market participants and is consistent with a registered clearing agency's obligation under Rule 19b–4(m) to update its internet website to post any rule changes filed pursuant to Exchange Act Rule 19b–4 within two business days.[208] As discussed above, supplementary materials required by Rule 17a–22 are important to the Commission's ongoing supervision of clearing agencies, and the timely posting of such materials ensures that Commission supervision is effectively considering the most current information available to the clearing agency and its participants.[209] Clearing agencies should already have established internal policies and procedures in place to meet these posting requirements for proposed rule changes, and these procedures could be reasonably replicated to meet the timeframes under the amendments to Rule 17a–22. Second, by replacing the requirement to file paper copies with a requirement to post the materials on the clearing agency's internet website, the time required to comply with the amended rule (when compared to the current rule) should be significantly reduced. By eliminating the paper filing requirement, clearing agencies should no longer have to expend the time and resources associated with copying, packaging, and mailing three copies of supplemental materials to the Commission and, where applicable, the ARA, which should in turn allow for shorter compliance timeframes. Third, 2 business days for posting is reasonable because the supplemental materials will have already been prepared for distribution to its participants or other entities with whom it has a significant relationship, and as such, should be readily available for posting to the clearing agency's internet website within the 2 business days.

2. Scope of Supplemental Materials

Rule 17a–22, as amended, does not change the scope of supplemental materials to which the rule previously applied. Accordingly, the amended rule retains the language that any supplemental material issued or made generally available to a clearing agency's participants or other entities with whom it has a significant relationship is subject to Rule 17a–22. The amended rule retains the list of illustrative examples of types of supplemental materials. In addition, copies of any material issued or made generally available to participants or other entities with whom the clearing agency has significant relationships (*e.g.,* issuers, transfer agents, custodian, service providers, other non-participant entities that avail themselves of clearing agency services, etc.) are, under the current rule, required to be filed, where applicable.

Because the significant relationships vary across clearing agencies, the Commission is deleting the list of examples of such relationships from the rule text. However, the removal of these examples from the text of the rule is not an indication that these entities are no longer considered within the scope of the rule. Rather, the Commission is eliminating this list to ensure that clearing agencies consider appropriately the universe of entities with whom they have a significant relationship, which varies by registered clearing agency because they serve different markets or offer different services and may also change over time as market practices evolve. Issuers, transfer agents, custodians, service providers, and other non-participant entities that use the clearing agency's services continue to be examples of the types of entities to whom a clearing agency may provide supplementary materials under the rule, and the revisions are intended to avoid confusion because certain types of relationships, such as issuers and transfer agents, exist in some markets but not others. A clearing agency generally should consider the markets it serves, the services it offers, and the universe of entities with whom it has a significant relationship when addressing its compliance with the rule.

While the scope of supplemental materials subject to the rule remains unchanged under the amended rule, the Commission is adding new rule text to expressly exclude any materials subject to section 19(b) of the Exchange Act or rules thereunder from the supplemental materials posting requirement, and thereby specify that the materials subject to Rule 17a–22, as amended, are distinct from any posting requirements under section 19(b) and Rule 19b–4 thereunder. This added text is consistent with the Commission's stated purpose of Rule 17a–22 when it was adopted in 1980,[210] and this change is intended to avoid the imposition of duplicative posting requirements.

Specifically, in the original Rule 17a–22 Adopting Release, the Commission also amended, among other things, the requirements applicable to the filing by SROs of proposed rule changes and certain other materials under Rule 19b–4 and Form 19b–4.[211] There, the Commission revoked a provision on Form 19b–4B requiring SROs to file notice of stated policies, practices, and interpretations not deemed to be rules because, in part, the provision duplicated the filing requirements in

requirements in Rule 17a–22, certain provisions in section 17A of the Exchange Act require notice to the ARA, and the amendments to Rule 17a–22 do not affect those provisions. *See, e.g.,* 15 U.S.C. 78q–1(b)(5)(C).

[206] *See* OCC 5/22/2023 Letter.

[207] In its comment letter, OCC suggested that the Commission clarify certain language in order to avoid ambiguity on the scope of supplemental materials made ''generally available.'' OCC 5/22/2023 Letter at 4. This comment is discussed in more detail below in Section III.C.3 below.

[208] *See* 17 CFR 240.19b–4(m).

[209] *See supra* section I.C.

[210] *See generally* Rule 17a–22 Adopting Release.

[211] *Id.*

Rules 6a–3, 15Aj–1, and 17a–21.[212] These rules required national securities exchanges, registered securities associations, and the MSRB, respectively, to submit to the Commission any material they made generally available. Accordingly, in conjunction with its revocation of the above-noted provision of Form 19b–4B, the Commission adopted Rule 17a–22, which established a filing requirement for registered clearing agencies parallel to the filing requirement under Rules 6a–3, 15Aj–1, and 17a–21. In so doing, the Commission distinguished between materials subject to Rule 19b–4 and those subject to the supplemental material rules. The inclusion of new text relating to Rule 19b–4 is meant to specify clearing agencies' obligations under Rule 17a–22 as being separate and distinct from the obligation under Rule 19b–4. In general, a clearing agency should consider within the scope of Rule 17a–22 policies, procedures, and other documents that help explain to affected parties the rules of the clearing agency but are not also required to be filed under Rule 19b–4.

3. Meaning of ''Generally Available''

The existing requirement under Rule 17a–22 to post only those materials that the clearing agency is ''making generally available'' remains unchanged from the original rule and as proposed. Any document that is made ''generally available'' to a wide or diverse group of individuals or entities should be considered supplemental material and as such, posted to the clearing agency's website. In the Commission's experience, most, if not all, of the filings required by Rule 17a–22 are already being posted on a registered clearing agency's website. Moreover, as stated in the Proposing Release, the Commission does not envision that those documents of a confidential or sensitive nature, or that would cause harm if publicly disclosed, fall within the scope of the rule.

OCC requested that the Commission clarify Rule 17a–22's text relating to the scope of certain supplemental materials made ''generally available'' to certain wide groups of entities with whom the clearing agency has a significant relationship, particularly as it relates to materials that may be considered confidential or sensitive. In particular, OCC stated that the amended rule could be interpreted to mean that any materials provided to a clearing agency's members or other entities (*i.e.,* a wide or diverse group of entities) could be considered ''generally available'' and therefore necessarily not confidential or sensitive.[213] OCC stated that, while some of the information a clearing agency may provide to clearing members or other entities to whom it has a significant relationship is appropriate to post publicly on its website, other materials provided to entities with whom it has a significant relationship are not appropriate for public disclosure. Examples of such materials include, according to OCC, instructions and technical information relating to connectivity, security practices, the operation of systems that only participating exchanges may access, or directories with direct contact information for employees within the clearing agency.[214] Consequently, OCC suggested that the Commission clarify that materials do not become ''generally available'' solely because such materials are provided to a wide or diverse group of entities.[215]

Some of the ambiguity, OCC explained, is created by Rule 17a–22 rule text that refers to ''issuing, or making generally available'' materials to relevant entities.[216] OCC states that neither the existing rule nor the proposed rule defines the text ''issuing or making generally available'' to exclude documents of a confidential or sensitive nature that a clearing agency may provide to its clearing members or other participants as a group, even if those documents could cause harm if publicly disclosed.[217] The commenter also proposes that the Commission consider revising the text to remove the reference to ''issuing,'' which appears to OCC to be duplicative to the reference to ''making.''[218] OCC states that the inclusion of ''service providers'' in the Commission's discussion of entities with whom a clearing agency has a significant relationship for purposes of Rule 17a–22 provides further support for its ''understanding.''[219] Such service providers could include, among many others, cybersecurity and cloud services providers, ''with whom the Commission would presumably expect the clearing agency to have sensitive and confidential communications.''[220] For such communications to fall outside of Rule 17a–22, OCC asserts that there must therefore be a category of communications with even a wide group of service providers or other relevant entities that are not considered ''generally available.'' The Commission, OCC suggests, should therefore clarify that not all documents provided to entities with whom a clearing agency has a significant relationship are, through such provisions, made ''generally available,'' even when provided to those entities as a group. That is, the Commission should clarify that only those materials provided to entities with whom a clearing agency has a significant relationship that the clearing agency also makes generally available are subject to Rule 17a–22.[221]

As previously discussed above and stated in the Proposing Release, any document made ''generally available'' to a wide or diverse group of individuals or entities should be considered supplemental materials and as such posted to the clearing agency's website. However, documents of a confidential or sensitive nature, or those that would cause harm if publicly disclosed, fall outside the scope of both preexisting Rule 17a–22 and amended Rule 17a–22 because such documents would not be sent to a wide or diverse group of individuals.[222] Clearing agencies often send certain documents that relate to sensitive or confidential information, such as security systems, sensitive trade or financial data, and surveillance methods, to a large number of persons or entities with whom the clearing agency has a significant relationship, such as participants or service providers, or to a smaller group of diverse persons or entities, such as technology companies that interface with clearing agency. However, distributions of this kind are not ''generally available'' because they are not intended for public viewing. To avoid causing harm to the clearing agency, markets, or participants, clearing agencies have a vested interest in ensuring that such sensitive or confidential material is distributed to

[212] *Id. See also* 17 CFR 240.6a–3; 17 CFR 240.15Aj–1; and 17 CFR 240.17a–21. Rule 6a–3 was amended in 2001 to allow a national securities exchange the option of posting supplementary information to its website and certifying that the information available on its website is accurate as of its date. *See* Exchange Act Release No. 44692 (Aug. 13, 2001), 66 FR 43721 (Aug. 20, 2001). Since the adoption of this amendment, usage of and familiarity with the internet among affected market participants has increased substantially, and so in amending Rule 17a–22, it is appropriate to transition the requirement in Rule 17a–22 for clearing agencies solely to internet posting.

[213] OCC 5/22/2023 Letter at 5.

[214] *Id.*

[215] *Id.*

[216] *Id.*

[217] *Id.* at 5–6.

[218] *Id.*

[219] OCC 5/22/2023 Letter at 6. As discussed in the proposing release, clearing agencies must make an assessment as to whether any type of entity, including service providers, is the type of entity with whom the clearing agency has a significant relationship and whether materials provided to that type of entity are made ''generally available.'' *See* Proposing Release at 23945–23946.

[220] *Id.*

[221] *Id.* at 6.

[222] *See* Proposing Release at 23945–23946.

the least number of persons or entities that have a need to know the information contained in the sensitive or confidential materials. This approach thereby ensures a limited distribution of the documents. In other words, by their nature, documents which are sensitive or confidential would not be considered documents made ''generally available'' and therefore would not be supplementary material. Therefore, such documents also would be beyond the scope of the rule's requirements.

In determining whether supplemental materials should be considered ''generally available'' and thus, subject to the posting requirements of Rule 17a–22, clearing agencies generally should consider all the facts and circumstances related to making public supplementary materials to a specific group or groups of persons or entities. For example, a clearing agency generally could consider the number and type of persons or entities to whom the supplemental materials are distributed in determining whether materials are ''generally available.'' A clearing agency generally could also consider the nature of the group to whom the distribution is made and the nature of the materials being distributed, particularly as it relates to harm that would result if publicly disclosed, and whether the limited distribution is consistent with its rules or policies for the treatment of confidential or sensitive information.

With regard to OCC's suggestion to revise the rule text to remove the reference in the rule text to ''issuing'' because it is ambiguous or duplicative with the reference to ''making generally available,'' the Commission does not agree.[223] The Commission is retaining the terminology as proposed to ensure that supplementary materials are within scope of the rule regardless of the particular mechanism a clearing agency may choose or use to distribute them.[224]

4. Requirement to ''Prominently Post''

Finally, in the amendment to Rule 17a–22 that requires the clearing agency to ''prominently post'' any supplemental material subject to the amended rule on the clearing agency's website, the Commission is interpreting, as proposed, ''prominently'' to mean that the supplemental materials are readily identifiable and accessible on the website for as long as the information remains applicable to affected parties. If access to the supplemental materials requires in-depth familiarity with the website or is not readily apparent because it requires searching through multiple layers to access the information, the supplemental materials generally would not be considered prominently posted. A clearing agency generally should make supplemental materials available at a prominently posted hyperlink on the clearing agency's website that is free and accessible (without any encumbrances or restrictions) by the general public. To the extent such a link does not already exist, a registered clearing agency could consider creating a specific web page that identifies and catalogues (such as through a list of hyperlinks) the supplemental materials that it maintains pursuant to Rule 17a–22.

IV. Requirements to Electronically File Broker-Dealer, OTC Derivatives Dealer, and SBS Entity Reports

The Commission is requiring the following forms and reports to be filed in electronic format on EDGAR:

[223] OCC 5/22/2023 Letter at 5–6.

[224] In the release proposing Rule 17a–22 in 1979, the Commission intended to establish for registered clearing agencies a filing requirement that generally paralleled the filing requirements imposed under Rules 6a–3, 15Aj–1, and 17a–21 (requiring national securities exchanges, registered securities associations, and the MSRB to make certain materials available to the Commission), thus requiring clearing agencies to file with the Commission material that they ''distribute or make generally available'' to their participants, pledgees or transfer agents. Exchange Act Release No. 15838 (May 18, 1979), 44 FR 30924, 30929 (May 29, 1979). The rule text, as proposed in 1979 and then adopted in 1980, refers to ''issuing or making generally available.'' *Id.* at 30934; Exchange Act Release No. 17258, 45 FR 73914 (Nov. 7, 1980).

Form or Report	Filer Type	Amendments
Form X-17A-5 Part III: Annual reports and related annual filings.	Broker or Dealer	The form (17 CFR 249.617) and Exchange Act Rules 17a-5 and 17a-12 (17 CFR 240.17a-5; 17 CFR 240.17a-12). Rule 101(a) of Regulation S-T (17 CFR 232.101(a)).
Form 17-H: Risk Assessment Report for Brokers and Dealers.	Broker or Dealer	Exchange Act Rule 17h-2T (17 CFR 240.17h2-T). Rule 101(a) of Regulation S-T.
Form X-17A-5 Part III: Annual reports and related annual filings.	SBS Entity	The form (17 CFR 249.617) and Exchange Act Rule 18a-7 (17 CFR 240.18a-7). Rule 101(a) of Regulation S-T.

A. Rules 17a–5, 18a–7, and 17a–12

The Commission proposed to amend Rules 17a–5, 18a–7, and 17a–12 to require that the annual reports and related annual filings that firms must file under Rules 17a–5, 18a–7, and 17a–12 be filed with the Commission electronically on EDGAR in a structured data language.[225] Specifically, the Commission proposed to amend paragraphs (d)(6) and (k) of Rule 17a–5, paragraph (c)(6) of Rule 18a–7, and paragraphs (b)(6), (k), (l), and (m) of Rule 17a–12 to provide that the annual reports and related annual filings must be filed with the Commission electronically on EDGAR in accordance with the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T, and must be filed in accordance with the requirements of Regulation S–T.[226] The proposed paragraphs also provide that the annual reports must be submitted in Inline XBRL (*i.e.,* as an Interactive Data File in accordance with Rule 405 of Regulation S–T).[227] The EDGAR Filer Manual would be updated to reflect these amendments to Rules 17a–5, 18a–7, and 17a–12.[228] First-time EDGAR filers would need to obtain EDGAR access credentials.[229]

As discussed in section VII of this release, most commenters supported filing the annual reports and related filings electronically on EDGAR,[230] although one commenter encouraged the Commission to address EDGAR's technical deficiencies, stating that ''[h]over-over definitions and links to relevant rules should [] be standard.'' [231] The Commission has stated that it has ''engaged in a multi-year, multi-phase effort to modernize the EDGAR system, including both internal and public-facing components. Security and modernization enhancements were deployed in June 2020, focusing on technology upgrades internal to the system.'' [232] The two changes the commenter requested have been included in prior updates to the EDGAR system.[233] Given the benefits of electronic filing discussed in the Proposing Release, commenter support for electronic filing, and the fact that the issues identified by this commenter have already been addressed, the Commission is adopting as proposed the requirement to file broker-dealers' and SBS Entities' annual audits electronically on EDGAR.

The Commission also proposed to require firms filing annual reports or annual supplemental reports with the Commission under Rules 17a–5, 18a–7, and 17a–12 to apply machine-readable Inline XBRL data ''tags'' to the disclosures contained in those documents before filing them through EDGAR.[234] These data tags can include numerical detail tags (which are used for tagging individual data points) for

[225] *See* Proposing Release at 23948–50. For further discussion of the structured data requirements, including Inline XBRL requirements, *see infra* section VII.A.

[226] *See* Proposing Release at 23948.

[227] *See id.; see also* Rule 405(a)(3) of Regulation S–T, which specifies Inline XBRL as the data language to be used for the Interactive Data File. *See* 17 CFR 232.405(a)(3).

[228] *See* Proposing Release at 23949.

[229] Instructions for obtaining EDGAR access credentials are on the Commission's website at *https://www.sec.gov/divisions/marketreg/broker-dealer-edgar-access-credentials.htm.*

[230] *See, e.g.,* SIFMA 5/22/2023 Letter at 13; Wohlfahrt Letter.

[231] *See* Letter from John Sage (Apr. 18, 2023) (''Sage Letter'').

[232] *See* Annual Report on SEC website Modernization Pursuant to Section 3(d) of the 21st Century Integrated Digital Experience Act (Dec. 2022), available at *https://www.sec.gov/files/21st-century-idea-act-report-2022–12.pdf.*

[233] *See, e.g.,* Annual Report on SEC website Modernization Pursuant to Section 3(d) of the 21st Century Integrated Digital Experience Act (Dec. 2022), *available at https://www.sec.gov/files/21st-century-idea-act-report2022–12.pdf.*

[234] *See* Proposing Release at 23949.

individual reported numeric values, such as line items on a financial statement, or text block tags for textual narratives, such as the discussions in the notes to financial statements.[235] In complying with the Inline XBRL requirements, filers could use Inline XBRL tagging software to apply Inline XBRL tags to their reports before submitting them to EDGAR, or could employ a tagging service provider to apply the Inline XBRL tags to their reports on their behalf.[236]

The proposed Inline XBRL requirement applies to all disclosures required by Form X–17A–5 Part III other than disclosures required on the facing page.[237] The facing page of Form X–17A–5 Part III is currently a fillable form that EDGAR converts into a custom XML data language and would remain so.[238]

After considering commenters' concerns discussed below, the Commission is adopting as proposed the requirement that annual reports or supplemental reports filed under Rules 17a–5, 18a–7, and 17a–12 utilize machine-readable Inline XBRL data tags with respect to the disclosures contained in such annual reports or annual supplemental reports.

As the Commission explained in the Proposing Release,[239] there will be substantial benefits to having firms file these reports in a machine-readable format.[240] Specifically, the structuring requirements will make the information included on the reports more readily accessible for retrieval, aggregation, and comparison across different broker-dealers, OTC derivatives dealers, SBSDs, and MSBSPs, and across different time periods, as compared to an unstructured PDF, HTML, or ASCII format requirement for the reports.[241] This will benefit investors and markets by enabling more timely and detailed supervision of filers, and by providing public users with a more efficient means of accessing and analyzing the publicly disclosed portion of the reports (such as the Statement of Financial Condition and the notes thereto). For example, Commission staff could leverage the machine-readability of the computational schedules to automatically flag any mathematical inconsistencies or calculation errors therein. In addition, the structured data requirement will enable EDGAR to perform technical validations (*i.e.,* programmatic checks to ensure the documents are appropriately standardized, formatted, and complete) upon intake of the reports, thus improving the quality of the filed data by decreasing the incidence of non-substantive errors, such as the omission of required disclosures that should always be present).[242]

Further, the Commission estimated the compliance costs associated with machine-readable format to be relatively modest for many Form X–17A–5 Part III filers, including smaller broker-dealers and filers affiliated with public companies that already have experience structuring data.[243] One commenter asserted that the Commission's structured data cost estimates in the proposing release were too low, and conveyed one firm's estimates that it would cost $20,000 to $40,000 per year per registrant to retain an XBRL tagging service provider and $20,000 to $30,000 per year per entity to purchase the tagging software.[244] The commenter described multiple fundamental operational changes that, in its view, firms will need to undergo as a result of the structured data requirements, including hiring additional personnel that are proficient in XBRL and XML, developing processes for converting the relevant data into XBRL and XML and uploading that data to EDGAR, training new and existing personnel on these processes, and overhauling systems and operations to integrate the XBRL/XML production and processing.[245] Based on the Commission's experience with firms submitting structured disclosures in other contexts (*e.g.,* operating company periodic reports and fund prospectus risk/return summaries), the Commission disagrees that the structured data requirements will require every firm to both license XBRL tagging software and contract the services of a third-party XBRL tagging service provider. Firms that have submitted structured disclosures to the Commission by fully outsourcing XBRL tagging requirements to a third-party service provider have likely not needed to also license XBRL tagging software as a result of the decision to outsource.[246] By the same token, the Commission disagrees that the structured data requirements under the rule amendments will obligate every filer or submitter to undergo each of the fundamental operational changes the commenter describes. Firms that outsource compliance with structured data requirements to a third-party service provider rather than comply with the structured data requirements in-house will not need to hire additional personnel that are proficient in XBRL and XML, develop processes for converting the relevant data into XBRL and XML and uploading that data to EDGAR, train new and existing personnel on these processes, or overhaul systems and operations to integrate the XBRL/XML production, because the third-party service provider would take such actions as necessary.

Firms that choose not to outsource compliance with Inline XBRL requirements will incur some, but not all, of the costs that the commenter describes. These firms will not be required to hire additional personnel that are proficient in XBRL, because firms can instead license Inline XBRL software tools that allow staff without XBRL proficiency to apply Inline XBRL tags to regulatory disclosures without any need to overhaul the firm's systems or operations. These firms will, however, likely need to implement processes for the use of such software tools (*i.e.,* applying Inline XBRL tags and validating the tagged regulatory disclosures), and will need to train their staff on these processes.[247]

Also, while the Commission estimates that some clearing agencies and exchanges will incur costs within the $20,000 to $30,000 range to structure Form CA–1 and Form 1, the Commission does not expect all broker-dealers (especially smaller broker-dealers) will incur the same level of costs to structure the annual audited report, in part because many broker-dealers are comparable to smaller reporting companies that file structured Commission filings and that incur significantly less than that range to

[235] *See id.*

[236] *See id.*

[237] *See id.* at 23950.

[238] *See id.*

[239] *See id.* at 23949–50.

[240] *See id.*

[241] *See id.*

[242] For additional discussion of benefits arising from structured data requirements, including responses to public comments that specifically address the topic, *see infra* section X.C.1.b.

[243] *See* Proposing Release at 23995.

[244] *See* SIFMA 5/22/2023 Letter at 5.

[245] *See id.* at 4.

[246] *C.f.,* Yu Cong, Ayishat Omar, Huey-Lian Sun; Does IT Outsourcing Affect the Accuracy and Speed of Financial Disclosures? Evidence from Preparer-Side XBRL Filing Decisions, *Journal of Information Systems,* 1 Jun 2019; 33 (2): 45–61 (explaining that ''to comply with the SEC's XBRL mandate, firms have been using in-house resources or outsourcing to third-party vendors to create their XBRL formatted financial statements'' and that '' . . . many firms, especially smaller firms that lack extensive resources, have outsourced the creation and filing process . . . '').

[247] The Commission includes these process and training costs in its estimates of initial structured data implementation costs and burdens in the Economic Analysis and Paperwork Reduction Act Analysis sections of this release. *See infra* section X.C.2.b (describing and quantifying initial implementation costs arising from the structured data requirements); *see also infra* sections IX.D.2, IX.D.5, IX.D.9.a, and IX.D.15 (estimating higher structured data burdens for the first year of compliance compared to subsequent years).

comply with such structuring obligations. More specifically, the Commission estimates larger broker-dealers will incur approximately $6,000 to $18,000 to structure Form X–17A–5 Part III in the first year and $4,000 to $12,000 to structure Form X–17A–5 Part III in subsequent years, while smaller broker-dealers will incur approximately $500 to $1,300 to structure Form X–17A–5 Part III in the first year and $300 to $1,000 to structure Form X–17A–5 Part III in subsequent years.[248] While the Commission is mindful of imposing significant additional costs, especially on smaller broker-dealers, for which an added compliance cost comprises a higher proportion of overall compliance costs than an equivalent cost for larger broker-dealers, the Commission does not believe structured data compliance costs in the estimated range of $300 to $1,300 for a report filed once per year will impose significant hardships on smaller broker-dealers.

The Commission estimated at proposal that (1) all respondents affiliated with public reporting companies already subject to Inline XBRL requirements would incur reduced burdens and costs because such respondents would be able to leverage the licenses or service agreements as well as the Inline XBRL tagging experiences of those affiliates; (2) respondents choosing to outsource Inline XBRL tagging to a third-party service provider would not incur initial implementation costs or burdens; and (3) respondents complying with Rule 18a–7 under a substituted compliance order pursuant to Exchange Act Rule 3a71–6 would not incur any additional costs related to structured data.

With respect to the first estimate, one commenter stated that this burden and cost reduction is dependent on the contractual arrangements that firms have with third-party providers, and on the internal staffing structure for each company.[249] In response to this comment, the Commission is now estimating that only half of the affiliated respondents will incur reduced burdens and costs.[250]

With respect to the second estimate, one commenter stated that structured data requirements will impose burdens associated with the process of diligencing, negotiating with, and onboarding third parties.[251] The Commission agrees, and because these burdens apply to respondents that outsource Inline XBRL tagging to third-party service providers, the Commission has increased the number of respondents it estimates will incur initial structured data implementation burdens.[252]

With respect to the third estimate, one commenter stated that the Commission should allow firms relying on substituted compliance to continue submitting home-country reports in their current form, explaining that the organization and requirements of these reports is often different from U.S. reports.[253] The Commission agrees that the first time a respondent relying on substituted compliance (or its third-party tagging service provider) applies Inline XBRL tags to its home country report, it will incur the additional burden of determining which disclosures within its home country report are responsive to U.S. disclosure requirements and must therefore be tagged.[254] To capture this additional step, the Commission is increasing the estimated initial Inline XBRL tagging burdens and costs compared to the estimates in the proposing release.

The Commission more fully explains the bases for these estimated cost ranges—which are generally consistent with those in the Proposing Release because the cost considerations relevant to Form X–17A–5 Part III structuring have not materially changed since the publication of the Proposing Release.[255] The Commission is also phasing in the machine readability requirements of the rule amendments, as discussed in section VIII below, to further ameliorate compliance concerns with respect to smaller broker-dealers.

The Commission also proposed to add a new paragraph (e)(2)(iii) to Rule 17a–5, new paragraph (d)(1)(iii) to Rule 18a–7, and new paragraph (c)(3) to Rule 17a–12, which would require the notarized oath or affirmation to be kept ''for a period of not less than six years, the first two years in an easily accessible place and in accordance with the requirements of'' Rule 17a–4, 18a–6, or 17a–12, as applicable.[256] The Commission also proposed to redesignate current paragraph (c)(3) of Rule 17a–12 as paragraph (c)(4) due to the insertion of new paragraph (c)(3). The Commission did not receive comment on the proposal to keep the oath or affirmation for at least six years, the first two years in an easily accessible place. The Commission is adopting this requirement as proposed.

However, the Commission received comment asking to remove the requirement for the annual audit's oath or affirmation to be notarized.[257] The Commission has considered the comment and agrees that the notarization requirement can be eliminated because the Commission is adopting amendments to ensure that electronic signatures are genuine. More specifically, as discussed in section VI.D.2. of this release, the Commission is amending its signature requirements in Rules 17a–5, 17a–12, and 18a–7 so that electronic signatures are permitted, but only if they are authenticated. Given the Commission's desire to modernize its intake of these forms to an electronic format and the safeguards it is adopting to ensure that electronic signatures are genuine, the notarization requirement can be eliminated to be consistent with other filings the Commission receives electronically, such as Form 10–K, which is also not notarized.[258] For these reasons, the Commission is amending Part III of Form X–17A–5 (*i.e.,* the annual audit's cover page) to remove the signature line for the notary public, and is adopting the six year record retention requirement, but is not adopting the word ''notarized'' originally included in

[248] *See infra* section X.C.2.b (describing these estimated cost ranges in greater specificity). The Commission estimates some larger broker-dealers that are affiliated with public reporting companies will incur approximately $2,000 to $6,000 to structure Form X–17A–5 Part III. *See id.*

[249] *See* XBRL Letter at 11.

[250] *See infra* sections IX.D.9 and section X.C.2.b.

[251] *See* SIFMA 5/22/2023 Letter at 4.

[252] *See infra* section IX.D.9.

[253] *See* SIFMA 5/22/2023 Letter at 7. Although the comment referred specifically to home-country equivalents to CCO reports, home-country equivalents to Rule 18a–7 annual reports and related filings can also vary from U.S. reports in their organization and requirements.

[254] *See infra* section IX.D.9.

[255] *See id.* As explained further in the Economic Analysis section, the Commission is making several changes to its Form X–17A–5 Part III structured data cost and burden estimates compared to the proposal. First, whereas the proposed estimates assumed all larger broker-dealer affiliates of public reporting companies would incur reduced structured data costs and burdens, the revised estimates assume only some of these broker-dealers will incur reduced costs and burdens. Second, whereas the proposed estimates assumed that broker-dealers which fully outsource XBRL compliance to third-party service providers would not incur initial implementation costs in the first year of compliance, the revised estimates assume that outsourcing broker-dealers will incur some initial implementation costs (specifically, the cost of negotiating, diligencing, and onboarding the third-party tagging service provider) in the first year of compliance. Third, whereas the proposed estimates did not assume firms relying on substituted compliance would incur different costs to structure Form X–17A–5 Part III than other broker-dealers would, the revised estimates include an additional initial implementation cost for firms relying on substituted compliance to structure Form X–17A–5 Part III.

[256] *See* paragraph (e)(2)(iii) of Rule 17a–5, as proposed to be amended; paragraph (d)(1)(iii) of Rule 18a–7, as proposed to be amended; paragraph (c) of Rule 17a–12, as proposed to be amended.

[257] *See* SIFMA 5/22/2023 Letter at 9–10; *see also* Integrated Solutions Letter at 3.

[258] *See* Commission Form 10–K, *available at https://www.sec.gov/files/form10-k.pdf.*

the six year record retention requirement in paragraph (e)(2)(iii) of Rule 17a–5, paragraph (d)(1)(iii) of Rule 18a–7, and paragraph (c)(3) of Rule 17a–12, as proposed to be amended.[259] Finally, SBS Entities relying on a Commission substituted compliance order also will continue to not be required to provide a notarized oath or affirmation with their annual audit submission to the Commission.[260]

Another commenter requested that the Commission permit a firm's Financial and Operations Principal (''FinOp'') to sign the oath or affirmation on its behalf.[261] Under Financial Industry Regulatory Authority (''FINRA'') rules, persons engaged in the investment banking or securities business of a FINRA member must register with FINRA and pass exams administered by FINRA to help ensure competence in specific areas of a broker-dealer's business.[262] One such category is Financial and Operations Principal.[263] Accordingly, while a FinOp plays an important role for a broker-dealer, under FINRA rules, the FinOp need not be an officer or owner of the broker-dealer. It is important the person signing the oath or affirmation be an officer or an owner to ensure that a person with responsibility for the affairs of the broker-dealer signs such oath or affirmation. However, nothing would prevent a FinOp who is also an officer or owner of the broker-dealer from signing the oath or affirmation in the person's capacity as an officer or owner.

In light of the requirement that the annual reports and related annual filings under Rules 17a–5 and 18a–7 be filed electronically on EDGAR, the Commission is amending the confidentiality provisions of the first sentence of paragraphs (e)(3) of Rule 17a–5 and (d)(2) of Rule 18a–7. Those sentences contain requirements that certain parts of the reports be ''bound separately'' and that certain pages be ''stamped confidential,'' which do not apply to the process of designating portions of the annual reports confidential when filing them electronically on EDGAR.[264] Therefore, the Commission proposed to amend the confidentiality provisions to conform to the electronic process for filing on EDGAR. The Commission proposed to amend the first sentence of paragraph (e)(3) of Rule 17a–5 and paragraph (d)(2) of Rule 18a–7 to state that the annual reports ''may be filed as: (i) One public document; or (ii) Two documents: (A) A document consisting of the Statement of Financial Condition, the notes to the Statement of Financial Condition, and the report of the independent public accountant covering the Statement of Financial Condition, which is not confidential; and (B) A document containing the balance of the annual reports for which confidential treatment may be requested and which will be deemed confidential for the purposes of section 24(b) of the Act.'' [265] The Commission received no comment on the proposal to amend these provisions to conform to the electronic process for filing on EDGAR and is adopting them as proposed.[266]

The Commission also proposed to replace ''deemed confidential to the extent permitted by law'' with ''deemed confidential for the purposes of section 24(b) of the Act'' in Rules 17a–5 and 18a–7 for consistency with the language used in other rules (*e.g.,* paragraph (c)(4) of Rule 17h–2T) and to clarify the legal basis of the rule.[267] The Commission also proposed this change in paragraph (a)(2) of Rule 17a–5 regarding FOCUS Report filings so that the language in Rule 17a–5 is internally consistent.[268] The Commission proposed analogous changes to the first sentence of paragraph (d)(2) of Rule 18a–7.[269] Rule 17a–12 does not contain an analogous provision relating to separately binding the public portion of the report from the portion for which confidential treatment will be requested, but the Commission proposed to amend pre-existing paragraph (c)(3) of Rule 17a–12 (which is being re-designated as paragraph (c)(4)) [270] to add language to state that an EDGAR filer may request confidential treatment.[271] The Commission also proposed to amend paragraph (a)(2) of Rule 17a–12 to replace ''deemed to be confidential'' with ''deemed to be confidential for the purposes of section 24(b) of the Act'' for consistency with the language used in other rules (*e.g.,* paragraph (c)(4) of Exchange Act Rule 17h–2T) and to clarify the legal basis of the rule.[272] The Commission received no comment on these proposals and is adopting them as proposed.[273]

B. Rule 17h–2T and Form 17–H

Under section 17(h) of the Exchange Act and Rule 17h–2T, broker-dealers that are part of a holding company structure and that maintain capital of at least $20 million must file quarterly and annual risk assessment reports with the Commission.[274] The reports are filed using Form 17–H.[275]

The Commission proposed to amend paragraph (a)(2) of Rule 17h–2T to require that the quarterly and annual risk assessment reports be filed with the Commission electronically through EDGAR, using the same process used by broker-dealers currently voluntarily

[259] *See* Part III of Form X–17A–5, as amended; paragraph (e)(2)(iii) of Rule 17a–5, as amended; paragraph (d)(1)(iii) of Rule 18a–7, as amended; paragraph (c)(3) of Rule 17a–12, as amended. The compliance date for this amendment to Form X–17A–5 Part III will take effect before the EDGAR system can be updated to remove the checkbox to acknowledge that the oath or affirmation has been notarized. A firm's oath or affirmation is not required to be notarized after the compliance date for this amendment to Form X–17A–5 Part III, even though the EDGAR system may continue to ask firms to check a box if the oath or affirmation is notarized in the interim period until the EDGAR system receives the required update.

[260] *See* SIFMA 5/22/2023 Letter at 10 (asking the Commission to confirm that firms relying on substituted compliance continue to not be required to submit a notarized oath or affirmation with their annual audit submission to the Commission).

[261] *See* Integrated Solutions Letter at 3.

[262] *See* FINRA Qualification Exams *available at https://www.finra.org/registration-exams-ce/qualification-exams; See also* FINRA Rule 1210 (stating that each person engaged in the investment banking or securities business of a member must be registered with FINRA as a representative or principal in each category of registration appropriate to the person's functions and responsibilities as set forth in FINRA Rule 1220, unless exempt from registration under FINRA Rule 1230).

[263] *See* FINRA Rules 1220(a)(4) and 1210.01.

[264] At present, a broker-dealer filing its annual reports on EDGAR designates the portions of the reports for which it is requesting confidentiality by checking a ''Request Confidentiality'' box when it uploads the relevant documents. As with the other aspects of the current voluntary filing program, this aspect of the EDGAR filing process will not change.

[265] *See* paragraph (e)(3) of Rule 17a–5, as proposed to be amended; paragraph (d)(2) of Rule 18a–7, as proposed to be amended.

[266] *See* paragraph (e)(3) of Rule 17a–5, as amended; paragraph (d)(2) of Rule 18a–7, as amended.

[267] *See* paragraph (e)(3) of Rule 17a–5, as proposed to be amended; paragraph (d)(2) of Rule 18a–7, as proposed to be amended.

[268] *See* paragraphs (a)(2) and (e)(3)(ii)(B) of Rule 17a–5, as proposed to be amended.

[269] *See* paragraph (d)(2) of Rule 18a–7, as proposed to be amended.

[270] *See* paragraph (c)(4) of Rule 17a–12, as proposed to be amended.

[271] *See* 17 CFR 240.24b–2.

[272] *See* paragraph (a)(2) of Rule 17a–12, as proposed to be amended.

[273] *See* paragraphs (a)(2) and (e)(3)(ii)(B) of Rule 17a–5, as amended; paragraph (d)(2) of Rule 18a–7, as amended; paragraphs (a)(2) and (c)(4) of Rule 17a–12, as amended.

[274] On June 29, 2020, the Commission exempted from the requirements of Rules 17h–1T and 17h–2T broker-dealers that do not hold funds or securities for, or owe money or securities to, customers and do not carry customer accounts, or that are exempt from Rule 15c3–3 pursuant to paragraph (k)(2) of that rule, and that maintain total assets of less than $1 billion and capital, including debt subordinated in accordance with Rule 15c3–1d, of less than $50 million. *See* Order Under Section 17(h)(4) of the Securities Exchange Act of 1934 Granting Exemption from Rule 17h–1T and Rule 17h–2T for Certain Broker-Dealers Maintaining Capital, Including Subordinated Debt of Greater than $20 Million but Less than $50 Million, Exchange Act Release No. 89184 (June 29, 2020), 85 FR 40356 (July 6, 2020).

[275] *See* 17 CFR 249.328T. Form 17–H is *available at https://www.sec.gov/about/forms/form17-h.pdf.*

using EDGAR to file Form 17–H.[276] The proposed amendments also provide that the financial statements required by Item 4 of Form 17–H would be required to be submitted in Inline XBRL. With respect to the Inline XBRL requirement, the process would mirror the process described above for broker-dealers filing annual reports in Inline XBRL.[277] Under the amendments being adopted, broker-dealers would be required to apply machine-readable Inline XBRL tags to the financial statements included in the quarterly and annual risk assessment reports. The existing custom XML requirement for the facing page and Part II of Form 17–H would remain in place, as would the PDF requirement for Item 1, 2, and 3 of Form 17–H (which require copies of organizational charts, risk management procedures, and descriptions of pending legal proceedings that the broker-dealer maintains pursuant to paragraph (a)(1) of Rule 17h–1T).[278]

Structured Data Requirements for Form 17-H

Inline XBRL	Item 4
Custom XML	Execution page, Part II
Unstructured PDF	Items 1, 2, and 3

The Commission received one comment specific to Form 17–H. The commenter, an XBRL standards association, advocated that the Commission require more of Form 17–H be filed in XBRL format.[279] The Commission proposed to utilize XBRL for the financial statements in Item 4 of Form 17–H, for which XBRL is well-suited.[280] The Commission proposed to retain the existing custom XML requirement for the facing page and for Part II, even though it acknowledged certain drawbacks to this approach, given the compliance burden associated with changing the facing page and Part II from a custom XML schema to XBRL.[281] Ultimately, the Commission disagrees with the commenter that expanding the XBRL requirements to cover more of Form 17–H would be appropriate because, while the Commission acknowledges the commenter's contention that greater use of XBRL would promote ease and efficiency of processing the data contained within Form 17–H, such advantages would not justify the compliance burdens and implementation costs that would be incurred to expand the use of XBRL in Form 17–H.[282] For these reasons, the Commission is adopting the amendments to Rule 17h–2T and the structured data amendments to Form 17–H as proposed.

V. Other Forms, Reports, or Notices

The Commission is requiring the following forms, reports and notices (and instructions thereto) to be filed or submitted on EDGAR:

[276] *See* Proposing Release at 23951.
[277] *See supra* section IV.A.
[278] *See* 17 CFR 240.17h–1T(a)(1).
[279] *See* XBRL Letter at 7.
[280] *See* Proposing Release at 23951.
[281] *See id.*
[282] *See id.*

Form, Report or Notice	Filer/Submitter Type	Amendments
Form X-17A-19: Information Required of National Securities Exchanges and Registered National Securities Associations pursuant to Sections 17 and 19 of the Securities Exchange Act of 1934 and Rule 17a-19 thereunder - Report of Change in Membership Status	Exchange or Association	The form and instructions to the form (17 CFR 249.635), and corresponding Exchange Act Rule 17a-19 (17 CFR 240.17a-19). Rule 101(a) of Regulation S-T (17 CFR 232.101(a)).
Notices (and withdrawals of notices) to the Commission pursuant to Rule 3a71-3(d)(1)(vi)	Certain registered SBSDs or registered brokers that meet certain capital and other requirements	17 CFR 240.3a71-3(d)(1)(vi) (Rule 3a71-3(d)(1)(vi)). 17 CFR 232.101(a), 232.201(a), and 232.202(a) (Rule 101(a), 201(a) and 202(a) of Regulation S-T).
Notices (and any amendments to the notices) to the Commission of Security-Based Swap Valuation Disputes pursuant to Rule 15fi-3(c)	SBS Entity	17 CFR 240.15fi-3(c) (Rule 15fi-3(c)). 17 CFR 232.101(a) and (d) (Rule 101(a) and (d) of Regulation S-T).
Compliance Reports pursuant to Rule 15fk-1(c)(2)(ii)(A)	SBS Entity	17 CFR 240.15fk-1(c)(2)(ii)(A). (Rule 15fk-1(c)(2)(ii)(A)). 17 CFR 232.101(a) and (c) (Rule 101(a) and (c) of Regulation S-T).

A. Notices Pursuant to Rule 17a–19 and Form X–17A–19

Rule 17a–19 requires every national securities exchange and registered national securities association to file a Form X–17A–19 with the Commission at its principal office in Washington, DC and with the Securities Investor Protection Corporation (''SIPC'') within five business days of the initiation, suspension, or termination of any member and, when terminating the membership interest of any member, to notify that member of its obligation to file financial reports as required by paragraph (b) of Rule 17a–5.[283]

Prior to these amendments, the instructions to Form X–17A–19 provided that the original of the form must be mailed to the Commission at its principal office and a copy of the form must be mailed to SIPC. The Commission proposed to amend this requirement to provide that Form X–17A–19 must be filed with the Commission electronically on EDGAR in accordance with the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T, and in accordance with the requirements of Regulation S–T.[284] Accordingly, Form X–17A–19 would be filed in a custom XML-based data language.[285] As is the case with most of the Commission's other XML-based forms, such as the aforementioned facing page to Form X–17A–5 Part III,[286] national securities exchanges and registered national securities associations would comply with the custom XML requirement by either inputting the information into a fillable web form that EDGAR would then

[283] 17 CFR 240.17a–5(b).

[284] *See* 17 CFR 240.17a–19, as proposed to be amended.

[285] Requirements to submit forms on EDGAR in custom XML structured data languages are set forth in the EDGAR Filer Manual, Volume II, Chapter 9, and the specific XML requirements for Form X–17A–19 would be included in an updated version of the EDGAR Filer Manual, Volume II, Chapter 8.

[286] *See supra* section IV.A.

convert into the custom XML-based data language, or submitting the information directly to EDGAR in the custom XML-based data language.[287] The Commission did not receive any comments specific to Form X–17A–19, other than the general structured data concerns discussed in sections VII.A. and X.C. below, and so to achieve the benefits of electronic submission and structuring described in section X.C.1, is adopting as proposed the requirement to file Form X–17A–19 electronically on EDGAR using structured data format.[288]

The Commission also proposed making conforming amendments to the ''General Instructions'' to Form X–17A–19. Instruction 2 was proposed to be amended to replace the instruction to mail the original of the form to the Division with an instruction to file the original ''electronically on EDGAR in accordance with the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T (§ 232.11) and in accordance with the requirements of Regulation S–T.'' Instruction 2 was also proposed to be amended to instruct filers to send copy number 1 of Form X–17A–19 to SIPC at SIPC's updated address. Instruction 3 was proposed to be amended to replace the words ''shall be executed with a manual signature'' with the words ''shall be signed.'' Instruction 4 was proposed to be deleted (and subsequent instructions would be renumbered accordingly), because the instruction about what to do if there is insufficient space in the form is unnecessary if the filing is submitted on EDGAR. Renumbered instruction 6 (formerly instruction 7) was proposed to be amended to provide that copies of the form may be obtained ''on the Commission's website'' instead of ''from the main office of the Securities and Exchange Commission in Washington, DC'' The Commission did not receive comment on these proposals and is adopting them as proposed.

In addition, the Commission proposed a technical amendment to lines 1, 4, and 5 of Form X–17A–19. These lines ask the filer to check off one of the listed exchanges or associations but the list is not up-to-date. Therefore, the Commission proposed to amend lines 1, 4, and 5 of Form X–17A–19 to include an ''other'' field for exchanges or associations that are not listed on the form, so that the listing of exchanges and associations would be complete. The Commission did not receive comment on this proposal and for the reason discussed above, is adopting it as proposed.

[287] *See* Proposing Release at 23953.

[288] *See* 17 CFR 240.17a–19, as amended.

B. Notice (and Any Withdrawal of a Notice) Filed Pursuant to Rule 3a71–3(d)(1)(vi)

1. Proposed Rule

The Commission proposed to amend Rule 3a71–3(d)(1)(vi) [289] to change the method of filing ANE Exception Notices.[290] Prior to these amendments, Rule 3a71–3(d)(1)(vi) required a Registered Entity to file an ANE Exception Notice by submitting it to the electronic mailbox described on the Commission's website at *www.sec.gov* at the ''ANE Exception Notices'' section,[291] and the Commission was required to publicly post the notice on the same section of its website.[292] A Relying Entity is able to review publicly posted ANE Exception Notices to determine whether its affiliated Registered Entity's ANE Exception Notice has been filed in accordance with Rule 3a71–3(d)(1)(vi).

The proposed amendments to Rule 3a71–3(d)(1)(vi) would require an ANE Exception Notice to be filed electronically on, and publicly disseminated through, the EDGAR system. The Commission did not propose changes to the content of an ANE Exception Notice, which consists of the name of the Registered Entity whose associated persons may conduct activity covered by the ANE Exception, the fact that those associated persons may conduct such activity, and the date. ANE Exception Notices filed electronically on EDGAR also would be permitted, but not required, to include contact details of a person or department at the Registered Entity that counterparties may contact regarding the ANE Exception. Each ANE Exception Notice thus contains a minimal amount of information.[293]

The Commission also proposed to amend Rule 3a71–3(d)(1)(vi) to: (1) provide that withdrawals of ANE Exception Notices shall be made electronically via EDGAR, and (2) require a Registered Entity to promptly withdraw its ANE Exception Notice if it becomes unregistered or otherwise ineligible to serve as the Registered Entity for purposes of the ANE Exception.[294] The latter requirement is intended to help ensure that ANE Exception Notices published on EDGAR remain accurate for market participants and other users of the information.[295]

Prior to these amendments, a Registered Entity could, but was not required to, withdraw an ANE Exception Notice by contacting the Commission to request that the notice be manually removed from the ANE Exception Notices web page.[296] Upon removal of the notice from the web page, the ANE Exception Notice would be withdrawn and a Relying Entity would no longer be able to rely on the ANE Exception unless another relevant ANE Exception Notice is filed.

Under the proposed rule, an ANE Exception Notice withdrawal request via EDGAR would result in EDGAR

[289] 17 CFR 240.3a71–3(d)(1)(vi).

[290] *See* Proposing Release, 88 FR at 23954–56. Rule 3a71–3(d) provides a conditional exception (''ANE Exception'') to Rule 3a71–3(b)(1)(iii)(C), 17 CFR 240.3a71–3(b)(1)(iii)(C), which itself provides that, for purposes of determining whether the dealing activity of a non-U.S. person that is not a conduit affiliate exceeds the applicable *de minimis* threshold (set forth in 17 CFR 240.3a71–2(a)(1)) below which a person is generally not within the SBSD definition, non-U.S. persons generally must count their security-based swap transactions connected with their dealing activity that are arranged, negotiated, or executed by personnel located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office (''ANE Activity''). *See* 17 CFR 240.3a71–3(d). One of the conditions to the ANE Exception is that all ANE Activity for which the non-U.S. person is relying on the exception (the ''Relying Entity'') be conducted by the U.S. personnel in their capacity as persons associated with a majority-owned affiliate (as defined in 17 CFR 240.3a71–3(a)(10)) of the Relying Entity that is either a registered SBSD or a registered broker that meets certain capital and other requirements (such a registered majority-owned affiliate, the ''Registered Entity''). *See* 17 CFR 240.3a71–3(d)(1). In addition, before an associated person of the Registered Entity commences this ANE Activity, the Registered Entity must file with the Commission an ANE Exception Notice. *See* 17 CFR 240.3a71–3(d)(1)(vi).

[291] *See https://www.sec.gov/tm/ane-exception-notices.*

[292] *See* 17 CFR 240.3a71–3(d)(1)(vi).

[293] *See* Proposing Release, 88 FR at 23954. As of Dec. 31, 2023, three Registered Entities had filed an ANE Exception Notice.

[294] *See* Proposing Release, 88 FR at 23955. Regardless of whether a required withdrawal is promptly filed by the Registered Entity (or filed at all), each condition of Rule 3a71–3(d)(1) must be satisfied in order for the Relying Entity to rely on the ANE Exception, and the Relying Entity may not rely on the exception if the Registered Entity is no longer registered or otherwise no longer satisfies the conditions described in 17 CFR 240.3a71–3(d)(1).

[295] *See* Proposing Release, 88 FR at 23955. The ANE Exception also is subject to a cap on the amount of certain inter-dealer security-based swaps positions. *See* 17 CFR 240.3a71–3(d)(1)(vii). Positions subject to the cap include security-based swaps between a Relying Entity and a non-U.S. person that is, or is an affiliate of, any Registered Entity that has filed an ANE Exception Notice with the Commission. *See* 17 CFR 240.3a71–3(a)(13). All such positions connected with dealing activity of the Relying Entity and certain of its affiliates are counted toward the cap. *See* 17 CFR 240.3a71–3(d)(6). Currently, the Relying Entity and its affiliates can review the ANE Exception Notices published on the Commission's website to determine whether any of the filed ANE Exception Notices are relevant to the Relying Entity's or any of its affiliates' progress toward the cap on inter-dealer security-based swaps. *See* Exchange Act Release No. 87780 (Dec. 18, 2019), 85 FR 6270, 6280–84 (Feb. 4, 2020) (''Cross-Border Adopting Release'').

[296] *See* Cross-Border Adopting Release, 85 FR at 6283 n.138.

identifying the relevant ANE Exception Notice as no longer active (as opposed to removal of the notice from EDGAR).[297] The withdrawal would also be publicly disseminated through EDGAR.

In the Proposing Release,[298] the Commission explained that as a result of the amendments to Rule 3a71–3(d)(1)(vi), EDGAR users would have the ability to search for ANE Exception Notices that have not been withdrawn, *i.e.,* the notices that remain eligible to satisfy the ANE Exception's notice condition. These filed and not withdrawn ANE Exception Notices would also help identify the Registered Entities who, together with their affiliates, could cause a transaction to fall under the ANE Exception's cap on certain inter-dealer security-based swaps.[299] The Commission further stated that the inclusion of ANE Exception Notices submitted on EDGAR and withdrawn in EDGAR's publicly available data would aid Relying Entities and their affiliates in determining their progress toward the ANE Exception's cap at a particular point in the past.[300] This functionality is not available under the email-based filing system, as the Commission retains only currently active notices on the ''ANE Exception Notices'' web page.

2. Amended Rule

After considering the public comments, the Commission has determined to adopt the amendments to Rule 3a71–3(d)(1)(vi) as proposed. Requiring ANE Exception Notices to be filed electronically and publicly disseminated via EDGAR will, among other things, facilitate more efficient and timely transmission and dissemination of information and will benefit the Commission, Registered Entities, Relying Entities, and other market participants. Electronic filing of ANE Exception Notices on EDGAR will enhance the ability of Relying Entities and their affiliates to access and use the filed ANE Exception Notices to determine their progress toward the ANE Exception's cap on inter-dealer security-based swaps. Other members of the public also will be able to access and review ANE Exception Notices more efficiently. Instead of reviewing each notice individually, users would be able to access the public-facing portion of the Commission's EDGAR system to search for a specific filer, for ANE Exception Notices and for withdrawals of ANE Exception Notices. Further, electronic submission and display of the ANE Exception Notices on EDGAR will provide market participants and the public with access to such notices and their withdrawals, including the names of filing Registered Entities and the date of each filing promptly after submission on EDGAR, without the need for manual Commission staff processing and the associated delays and demands on Commission resources.[301]

One commenter stated that EDGAR's search functionality is extremely limited, and, as a result, firms would not be able to access and use ANE Exception Notices on EDGAR in an efficient manner.[302] Accordingly, the commenter asserts, even if the Commission requires firms to submit ANE Exception Notices via EDGAR, the Commission must continue to publish such notices on the Commission's website.[303] The Commission disagrees. Although in the past EDGAR's search function may have been more limited, EDGAR's current functionalities will facilitate the objectives of the amendments to Rule 3a71–3(d)(1)(vi). In particular, EDGAR's ''Full-Text Search'' functionality, launched in 2021, includes options to access the full text of electronic filings since 2001 to the present by date, company name, person, Central Index Key (''CIK''), and filing type.[304]

As discussed in the Proposing Release, because of the nature and minimal amount of information included in ANE Exception Notices, users of ANE Exception Notices would be unlikely to benefit from structured data tools to analyze the data therein, as these tools typically would assist in analyzing large data sets more efficiently, and using an unstructured data format for ANE Exception Notices would make better use of the resources of the Commission and market participants. Accordingly, the amendments do not require the submission and withdrawal of ANE Exception Notices to be made in a structured data format.

A Registered Entity that has not previously made an electronic filing on EDGAR would need to obtain EDGAR access credentials pursuant to the EDGAR Filer Manual in order to file an ANE Exception Notice electronically via EDGAR.[305] Requiring submission of ANE Exception Notices electronically through EDGAR is appropriate because most Registered Entities already have access to and familiarity with EDGAR through registering or filing information with the Commission.[306] For those Registered Entities, the Commission does not expect there to be additional burdens associated with mandating EDGAR filing of ANE Exception Notices.

As discussed in the Proposing Release, it would not be appropriate or necessary for a Registered Entity to have available a temporary or continuing hardship exemption[307] from the requirement to file ANE Exceptions Notices on EDGAR. For one, reliance on the ANE Exception, which requires the filing of an ANE Exception Notice, is voluntary, and the ANE Exception is only available for Relying Entities whose affiliated Registered Entity is operationally capable of complying with

[297] *See* Proposing Release, 88 FR at 23955. Consistent with current Rule 3a71–3(d)(1)(vi), the EDGAR system also would not allow amendments to an ANE Exception Notice. To report a name change or change of contact details on an ANE Exception Notice via EDGAR, a Registered Entity must file a new notice with the updated information.

[298] *See* Proposing Release, 88 FR at 23955–56.

[299] *See supra* note 295.

[300] Subject to Rule 3a71–3(d)(6)(ii), security-based swap positions that counted toward the cap before withdrawal of an ANE Exception Notice continue to count toward the cap after such withdrawal. *See* Proposing Release, 88 FR at 23955–56.

[301] Following the compliance date of the amended rule, ANE Exception Notices will no longer be posted on the Commission's website, including notices filed prior to the compliance date. The Commission will transfer to EDGAR any ANE Exception Notice filed (and not withdrawn) prior to the compliance date. Such ANE Notices will retain their pre-compliance date filing date. Security-based swap positions that counted toward the cap in 17 CFR 240.3a71–3(d)(1)(vii) prior to the compliance date will continue to count toward the cap after the transfer of the ANE Exception Notices. Upon the compliance date, Registered Entities will become subject to the new withdrawal requirements under the amended rule with respect to their ANE Exception Notices already on file with the Commission.

[302] SIFMA 5/22/2023 Letter at 12.

[303] *Id.*

[304] *See https://www.sec.gov/edgar/search/#.* Resources for using this functionality, including a series of FAQs, are available on the Commission's website. *See https://www.sec.gov/edgar/search-and-access* and *https://www.sec.gov/edgar/search/efts-faq.html.* As an example, once updates to EDGAR are made to accommodate submission (and withdrawal) of ANE Exception Notices via EDGAR, a firm should be able to go to *https://www.sec.gov/edgar/search/#,* and, using the ''Browse filing types'' option, select the designated category to search for ANE Exception Notices.

[305] A small number of Registered Entities may be first-time EDGAR filers; for example, a party that succeeds to the registration of a Registered Entity in a merger, conversion, or other corporate transaction may not yet have EDGAR access credentials.

[306] A Registered Entity that is an SBSD must file its application for registration on EDGAR. *See* 17 CFR 240.15Fb2–1(c). Additionally, pursuant to amendments being adopted in this release, a Registered Entity that is a broker will be required to file on EDGAR certain annual reports, and many brokers already do so voluntarily under existing Commission rules. *See infra* sections VIII and XI.B.

[307] *See,* respectively, 17 CFR 232.201(a), addressing temporary hardship exemptions, and 17 CFR 232.202(a), addressing continuing hardship exemptions.

certain disclosure, communication, and recordkeeping conditions.[308] Further, the ANE Exception is premised in part on the public availability of the ANE Exception Notice to Relying Entities. For these reasons, as well as the simplicity of the expected filings and the sophistication of the filers, the Commission is amending Regulation S–T to exclude ANE Exception Notices and withdrawals from temporary hardship exemptions under Rule 232.201(a) and continuing hardship exemptions under Rule 232.202(a).

C. Notice (and Any Amendment, Including Notice of Dispute Termination) Provided Pursuant to Rule 15fi–3(c)

1. Proposed Rule

The Commission proposed to amend Rule 15fi–3(c) to require that the submission of valuation dispute notices and amendments to such notices to the Commission (''VDNs'') be made in EDGAR in a custom XML-based structured data language.[309] Under Rule 15fi–3(c), each SBS Entity must promptly notify the Commission and any applicable prudential regulator [310] of any security-based swap valuation dispute in excess of $20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level, if not resolved within: (1) three business days, if the dispute is with a counterparty that is an SBS Entity; or (2) five business days, if the dispute is with a counterparty that is not an SBS Entity.[311] Rule 15fi–3(c) also requires SBS Entities to notify the Commission and any applicable prudential regulator if the amount of any security-based swap valuation dispute that was the subject of a previous notice increases or decreases by more than $20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level.[312]

Prior to these amendments, Rule 15fi–3(c) required SBS Entities to submit VDNs ''in a form and manner acceptable to the Commission.'' [313] SBS Entities had two options for submitting VDNs: (1) an electronic submission in PDF format via EDGAR; or (2) submission in PDF format to a dedicated Commission email address.

Under the proposed amendments, Rule 15fi–3(c) would continue to provide flexibility to SBS Entities regarding the information to be included in a VDN, but the Commission would encourage—not require—SBS Entities to disclose specific categories of information in VDNs, as discussed more fully below. In addition, the custom XML-based data language for VDN submissions and a fillable EDGAR-based web form would include XML elements reflecting those encouraged disclosures.[314] SBS Entities would be permitted to leave one or more fields in the EDGAR-based fillable web form unpopulated and provide their own description of the dispute in a dedicated general field in the fillable form.[315] SBS Entities may opt not to use the fillable web form to satisfy the structured data submission requirement and, instead, may generate a VDN using the custom XML-based data language and upload the VDN to EDGAR.[316]

2. Amended Rule

Based on the reasons discussed in the Proposing Release, and after considering the public comments, the Commission is adopting the amendments to Rule 15fi–3(c) as proposed. Accordingly, amended Rule 15fi–3(c) requires SBS Entities to submit VDNs electronically in EDGAR using a custom XML-based data language specific to VDNs.[317] This requirement applies to initial VDNs and amendments to VDNs, including notices of termination of a dispute.[318] Under the amended rule, SBS Entities will no longer be able to submit VDNs to the Commission via email or in PDF format on EDGAR.[319]

As discussed in the Proposing Release, SBS Entities should already have obtained access to EDGAR in connection with their registration with the Commission in such capacity and should therefore be familiar with how to use the EDGAR system.[320] As such, the Commission does not expect there to be any additional burden associated with expressly mandating submission of VDNs on EDGAR.

One commenter stated that requiring submission of VDNs via a fillable web form on EDGAR would introduce inefficiencies and opportunities for human error; specifically, that firms would need an individual to copy and paste the text from the relevant data output into the Commission's web form, which would likely necessitate a second individual to watch the first individual input the data.[321] According to the commenter, this type of ''over the shoulder'' observation is needed to minimize (but will not entirely eliminate) the risk of error and would create inefficiency for no corresponding benefit. The commenter requests that the Commission allow firms ''to continue submitting their [VDNs] (and subsequent amendments and terminations) in PDF, and, at the very least, allow firms to submit a structured data file as the [VDN] rather than filling in a web form.'' [322]

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[308] An inability to file an ANE Exception Notice using the Commission's EDGAR system may indicate that a Registered Entity's operational conditions would present undue risk if the ANE Exception were available to permit Relying Entities to defer registration as SBSDs.

[309] *See* Proposing Release, 88 FR at 23957.

[310] The term ''prudential regulator'' is defined in 17 CFR 240.15fi–1(m) to have the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a) and includes the Federal Reserve, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Association, and the Federal Housing Finance Agency, as applicable to the SBS Entity.

[311] *See* 17 CFR 240.15fi–3(c).

[312] *Id.* Such amendments are required to be provided to the Commission and any applicable prudential regulator no later than the last business day of the calendar month in which the applicable security-based swap valuation dispute increases or decreases by the applicable dispute amount. *Id.*

[313] In proposing Rule 15fi–3(c), the Commission explained that this phrase was intended to provide SBS Entities with flexibility to determine the most efficient and cost-effective means of making such submissions, so long as it is deemed to be acceptable by the Commission. *See* Risk Mitigation Techniques for Uncleared Security-Based Swaps, Exchange Act Release No. 84861 (Dec. 19, 2018), 84 FR 4614, 4621, n.47 (Feb. 15, 2019).

[314] *See* Proposing Release, 88 FR at 23958.

[315] *See id.*

[316] *See id.*

[317] SBS Entities relying on Commission orders granting substituted compliance pursuant to 17 CFR 240.3a71–6 may be required to provide the Commission reports regarding disputes between counterparties, among other conditions in the orders. *See, e.g.,* Exchange Act Release No. 93411 (Oct. 22, 2021), 86 FR 59797, 59815 (Oct. 28, 2021) (File No. S7–08–21). Beginning on the compliance date for the amendments to Rule 15fi–3(c), the only method available for SBS Entities to provide the dispute reports required by the Commission's existing substituted compliance orders will be electronically in EDGAR using the custom XML-based data language specific to VDNs. The flexibility provided by a fillable web form and by the custom XML-based data language's elements—including an XML element to capture any information that does not fall within any of the other elements—will facilitate submission of dispute reports required by the Commission's orders with minimal modification.

[318] Under amended Rule 15fi–3(c)(2), an SBS Entity will be required to submit VDN amendments electronically in EDGAR using the custom XML-based data language, as required by the rule, regardless of the method the SBS Entity used to submit the original VDN or previous amendments. For a VDN submitted after the compliance date that amends a VDN submitted via email prior to the compliance date, the SBS Entity may indicate in its submission that the VDN amends a VDN previously submitted via email.

[319] Under amended Rule 15fi–3(c), SBS Entities with a U.S. prudential regulator must notify the prudential regulator ''in a form and manner acceptable to the prudential regulator.'' Prior to the amendments, Rule 15fi–3(c) did not specify how SBS Entities must notify the prudential regulator. The additional specificity in the amended rule will provide guidance to SBS Entities along with the flexibility to notify any applicable U.S. prudential regulator in a form and manner acceptable to that regulator.

[320] *See* Proposing Release, 88 FR at 23958.

[321] *See* SIFMA 5/22/2023 Letter at 11.

[322] *Id.*

The Commission disagrees with the commenter's statement that the amendments to Rule 15fi–3(c) provide no corresponding benefit. Using EDGAR—as opposed to a dedicated email inbox—provides a more efficient and secure way to submit and process VDNs. As discussed in the Proposing Release, the submission of VDNs in a structured data language will enable the Commission to analyze the information therein more efficiently and effectively, as compared to the current methods of submission, for purposes such as identifying trends in disclosed valuation disputes or performing technical validations (*i.e.,* programmatic checks) upon intake to ensure VDNs are appropriately standardized and formatted.[323] These benefits justify the amendments notwithstanding the potential need for an over-the-shoulder review, as described by the commenter.

The amended rule provides that each SBS Entity is required to submit VDNs ''electronically through the Commission's EDGAR system, in accordance with the EDGAR Filer Manual . . . .'' While, beginning on the compliance date for the amendments to Rule 15fi–3(c), an SBS Entity will no longer be able to submit VDNs in PDF format for the reasons discussed above, in response to the comment, the Commission is confirming that, as provided for under the current EDGAR Filer Manual,[324] an SBS Entity will have the option to submit to the Commission via EDGAR a VDN that the SBS Entity has constructed in the custom XML-based data language instead of using the fillable web form.

One commenter stated that the Proposing Release was incomplete because it did not ''identify the specific elements that will need to be included on the XML valuation dispute reports.'' [325] The same commenter stated that ''if the Commission does adopt a fillable web form requirement or another requirement to submit reports using structured data language, it must provide firms with an opportunity to review and comment on the structure and content of the requirement.'' The commenter stated that ''the [Proposing Release] is not entirely clear whether firms will be required to simply type in data or to submit a file when submitting [VDNs]'' and ''there may be data elements that need to be clarified or that should not be included at all.'' [326]

As discussed above, the proposed rule would not amend the content requirements for VDNs. Rather, the Proposing Release encouraged SBS Entities to include certain categories of information in their VDNs, and those categories were detailed in the Proposing Release. While the Proposing Release did not include an accompanying XML schema for that XML-based data language, as discussed above, under the amended rule, SBS Entities will have flexibility in submitting VDNs in structured data, with a choice of using the EDGAR-based fillable form (with additional flexibility as to what to disclose in the form) or uploading a VDN in the XML-based data language. Additionally, the Proposing Release did specify that the data language would include discrete XML elements for each of the encouraged disclosures,[327] as well as a separate XML element to capture any information provided by SBS Entities that does not fall within the encouraged disclosures.

As discussed in the Proposing Release, one of the primary objectives of Rule 15fi–3(c) is to inform the Commission and its staff that a valuation dispute has arisen, allowing the Commission and staff to consider whether additional follow-up is warranted. While Rule 15fi–3(c) is intended to provide SBS Entities with flexibility to submit the required information to the Commission in a manner that is most efficient for each SBS Entity,[328] the Commission is encouraging—but is not requiring—SBS Entities to include in a VDN basic information about the security-based swap valuation dispute, including: (1) identifying information about both counterparties (including each party's LEI); (2) the date of the dispute (or the termination date, if applicable); (3) the type of dispute; (4) disclosure about which counterparty is the receiver and which is the payer; and (5) the disputed amount, in U.S. Dollars.[329] The Commission is also encouraging SBS Entities to provide any applicable identifier about the relevant security-based swap (such as the product ID), the notional amount of the security-based swap, and disclosure about which counterparty is calling the dispute (*i.e.,* the direction of the dispute). In amendments to previously submitted VDNs, including notices of termination of a dispute, SBS Entities are encouraged to provide information to assist the Commission in understanding the purpose of the amendment or the circumstances of termination of a dispute.[330] The inclusion of such information (''basic information'') in VDNs will assist Commission staff in focusing the scope of any follow-up inquiries and thus reduce both Commission and SBS Entity resources used in connection with valuation dispute reports.

Consistent with this approach, the Commission's custom XML-based data language for VDNs will include discrete XML elements for each category of the basic information listed above, and the associated fillable web form on EDGAR will contain discrete fields mirroring those XML elements. However, to maintain the flexibility inherent to the Commission's approach to VDNs, the custom XML data language (and associated fillable web form) will also contain an XML element (and fillable field) to capture any information provided by SBS Entities that does not fall within the categories of basic information listed above. SBS Entities may use this XML element (and associated fillable field) to submit their VDN information, as appropriate, and may refrain from using any number (or all) of the other XML data elements and associated fillable fields if such information is not needed to report the

[323] *See* Proposing Release, 88 FR at 23958.

[324] *See* EDGAR Filer Manual, Volume II, Chapter 9, Filer-Constructed XML Submissions (providing instructions regarding constructing a submission using the Filer-Constructed XML Filing Specification documents (available at *https://www.sec.gov/info/edgar/tech-specs*) and providing step by step instructions for transmitting such submissions via EDGAR to the Commission).

[325] *See* SIFMA 5/22/2023 Letter at 2.

[326] *See* SIFMA 5/22/2023 Letter at 11.

[327] *See* Proposing Release, 88 FR at 23958. *See also infra* section VII.A (discussing taxonomies and the public feedback process).

[328] *See also* Risk Mitigation Techniques for Uncleared Security-Based Swaps, Exchange Act Release No. 87782 (Dec. 18, 2019), 85 FR 6359, 6368 (Feb. 4, 2020) (''Risk Mitigation Adopting Release''); Security-Based Swap Valuation Dispute Notices, *available at https://www.sec.gov/tm/Security-Based-Swap-Valuation-Dispute-Notices* (where the staff states that, ''In terms of the contents of the notice, the Commission explained when it adopted Rule 15fi–3(c) that the notice is not required to include specific fields, 'in order to provide SBS Entities with the flexibility to submit the required information to the Commission in a manner that is most efficient for each SBS Entity.' '').

[329] As discussed in the Proposing Release, this information is consistent with the notices that swap dealers and major swap participants are required to provide to the NFA, which receives notices from Swap Entities pursuant to CFTC Regulation 23.502(c) regarding swap valuation disputes. *See* NFA Interpretive Notice 9072 to Compliance Rule 2–49: Swap Valuation Dispute Filing Requirements (May 18, 2017), *available at https://www.nfa.futures.org/rulebook/rules.aspx?Section=9&RuleID=9072,* and Effective date of Interpretive Notice to NFA Compliance Rule 2–49: Swap Valuation Dispute Filing Requirements, Notice I–17–13 (July 20, 2017), *available at https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4827. See* Proposing Release, 88 FR at 23957.

[330] One commenter stated that ''it would be quite difficult and, in some cases, sensitive for firms to provide this information.'' The commenter therefore ''[agreed] with the Commission that it should not require SBS entities to provide such information in the [VDNs].'' *See* SIFMA 5/22/2023 Letter at 12.

dispute. In addition, as the Commission proposed, SBS Entities may opt not to use the fillable form altogether and instead generate a VDN using the custom XML-based language and upload it to EDGAR.

One commenter recommended that the Commission require SBS Entities to submit LEIs with VDNs, stating that ''[s]tructured data is more useful when it contains a consistent identifier, like the LEI,'' and that ''[r]eporting of non-standardized data . . . will lead to inconsistent submissions and in terms of comparability, ultimately more work on behalf of the Commission.'' [331] The Commission does not disagree that LEIs are beneficial in that they provide consistent and comparable identification of entities, and indeed, as discussed above in this section, the Commission encourages SBS Entities to include LEIs when submitting VDNs. However, the scope of the rule amendments is focused on the manner of transmitting VDNs (*e.g.,* from email or unstructured submission to structured EDGAR submission), and not on adding new specific content requirements for VDNs. Therefore, the Commission is encouraging, but not mandating, the inclusion of LEIs in VDNs.

One commenter stated that the Commission must continue to allow SBS Entities to submit terminations or amendments [332] to VDNs via email due to limitations in EDGAR's functionalities. Specifically, this commenter states that firms do not have a mechanism to associate terminations or amendments with an original VDN on EDGAR if the dispute lasts longer than 30 days due to a lack of an archival function for VDNs. According to the commenter, for this reason, firms currently submit amendments and terminations via email using the accession number associated with the original report, and upending this process would ''make it virtually impossible for firms to associate reports with subsequent amendments or terminations.'' [333]

While the Commission acknowledges that EDGAR does not currently have an archival function with respect to VDNs, SBS Entities currently do, in fact, have a means to associate amendments (including terminations) with an original VDN on EDGAR, and will continue to have the ability to do so upon implementation of the amended rule. Specifically, upon submitting a VDN on EDGAR, the submitter receives an email with data that includes the file number associated with the VDN. This emailed information regarding the submission is also available to the submitter on EDGAR for 30 days. A VDN submitter can retain this information. If a submitter needs to submit a VDN amendment, the submitter would enter the file number associated with the VDN being amended. The EDGAR system will associate the file number on the amendment with the common file number on the original VDN. Therefore, the Commission does not agree with the commenter that the Commission must continue to allow VDN amendments to be submitted via email in order to be able to associate terminations or amendments with an original VDN.

Finally, as discussed in the Proposing Release, the Commission understands that VDNs may contain information that is sensitive to one or both of the counterparties. If a VDN submitted to the Commission includes confidential information, the SBS Entity can request confidential treatment of the information.[334] If such a confidential treatment request is made, the Commission anticipates that it would keep the information confidential, subject to the provisions of applicable law; [335] whether any material is confidential is determined pursuant to applicable law, including but not limited to the Freedom of Information Act and Commission rules governing requests for confidential treatment.

D. Compliance Reports Submitted to the Commission Pursuant to Rule 15fk–1(c)(2)(ii)(A)

1. Proposed Rule

Rule 15fk–1(c) requires that the chief compliance officer (''CCO'') of an SBS Entity prepare and sign an annual compliance report (''CCO report'') [336] that must be submitted to the Commission within 30 days following the deadline for filing the SBS Entity's annual financial report with the Commission pursuant to section 15F of the Exchange Act and the rules and regulations thereunder.[337] Rule 15fk–1(c) does not specify the manner in which the CCO report must be submitted, whether in paper or electronic format.[338] Accordingly, prior to these amendments, an SBS Entity could submit its CCO report as a paper or electronic submission. To facilitate electronic submission of CCO reports, the Commission updated the EDGAR system to receive the reports electronically. In 2023, approximately 50% of registrants submitted their CCO reports electronically through EDGAR in PDF format.

The Commission proposed to amend Rule 15fk–1(c)(2)(ii)(A) to require CCO reports to be submitted electronically through EDGAR in Inline XBRL (*i.e.,* as an Interactive Data File in accordance with Rule 405 of Regulation S–T).[339] As proposed, the required electronic submission of these reports through EDGAR would specify the manner of submission, streamline and simplify the filing process for an SBS Entity and the Commission, eliminate the need to establish manual processes that may introduce error, and make submissions available immediately to Commission staff.[340] As explained in the Proposing Release, requiring CCO reports to be submitted in Inline XBRL format would allow Staff to better utilize CCO reports to gauge the soundness of SBS Entity compliance programs, as well as to, among other things, enable EDGAR to perform technical validations upon intake of the reports, thus potentially improving the quality of the submitted data by decreasing the incidence of non-substantive errors.[341]

2. Final Rule

Based on the Commission's experience over the course of implementing Rule 15fk–1(c), and after considering the public comments, the Commission is adopting the amendments to Rule 15fk–1(c) as proposed. Accordingly, final Rule 15fk–1(c) requires SBS Entities to submit CCO reports electronically in Inline XBRL through EDGAR.[342] Under the final rule, SBS Entities will no longer be able to submit CCO reports to the Commission via email, in PDF format on EDGAR, or

[331] *See* GLEIF Letter.

[332] While the commenter references the submission of ''terminations'' and amendments, Rule 15fi–3 does not impose requirements specific to terminations of a valuation dispute. Rather, the termination of a dispute may require an SBS Entity to submit an amended VDN under Rule 15fi–3(c) if the criteria of the rule are met.

[333] *See* SIFMA 5/22/2023 Letter at 12.

[334] *See* 17 CFR 200.83.

[335] *See, e.g.,* 5 U.S.C. 552 *et seq.;* 15 U.S.C. 78x (governing the public availability of information obtained by the Commission). *See also* Risk Mitigation Adopting Release, 85 FR at 6389–90.

[336] For purposes of this release, the term ''CCO report,'' when used with respect to an SBS Entity relying on substituted compliance pursuant to a Commission order regarding the requirements of Exchange Act section 15F(k) and Rule 15fk–1, refers to, as applicable, reports that must be provided by the SBS Entity to the Commission as a condition to the SBS Entity relying on substituted compliance orders regarding the requirements of Exchange Act section 15F(k) and Rule 15fk–1.

[337] 17 CFR 240.15fk–1(c).

[338] *See id.*

[339] *See* Proposing Release, 83 FR at 23959.

[340] *See id.*

[341] *See id.*

[342] The amendment does not change what is required to be included in the CCO report under Exchange Act Rule 15fk–1(c). *See* 17 CFR 240.15fk–1(c).

in paper. This includes SBS Entities relying on Commission orders granting substituted compliance pursuant to Exchange Act Rule 3a71–6.[343]

Requirement To Submit CCO Reports Through EDGAR

With respect to the requirement to submit CCO reports through EDGAR, one commenter supported the proposal, urging the Commission to require a single process for the reporting of all CCO reports.[344] According to the commenter, allowing reporting entities to report in different formats, using different standards, will lead to confusion and added expense to the marketplace.[345] Another commenter objected generally to requiring firms to submit any forms, including but not limited to CCO reports, on EDGAR until EDGAR's perceived technical deficiencies are addressed, including, as relevant here, assurances that EDGAR has adequate processes in place to ensure that CCO reports and other confidential reports are, and remain, confidential.[346]

It is appropriate to require SBS Entities to submit CCO reports on EDGAR. First, as the Commission stated in the Proposing Release, using EDGAR as opposed to permitting each registrant to decide on its own submission format—whether that be in paper, via email to the Commission, or on EDGAR—provides a more streamlined and simplified submission process, eliminates the need to establish manual processes that may introduce error, and provides a way for the Commission staff to receive CCO reports immediately. Approximately half of SBS Entities already submit their CCO reports in PDF format via EDGAR, and the remainder should easily be able to utilize EDGAR because those entities should already have obtained access to EDGAR in connection with their registration with the Commission. Second, with respect to the concerns about confidentiality, as a general matter, the CCO reports are non-public, and the amendments we are adopting today do not change existing rules and processes with respect to confidential treatment of materials submitted to the Commission.[347]

Inline XBRL Structured Data Requirement

With respect to the proposed requirement to submit CCO reports in Inline XBRL structured data format, one commenter stated that ''preparing this data in an unambiguously machine-readable format will improve accessibility to the data for retrieval, data aggregation, and analysis.'' [348] That same commenter stated that Inline XBRL can render both human- and machine-readable data from CCO reports.[349] That commenter added that unstructured data would require Commission staff to process each file individually and vet them for accuracy. Structured, machine-readable data, alternatively, can be processed in seconds using Inline XBRL software.[350]

Another commenter stated that the structured data requirement would place a burden on SBS Entities that are not affiliated with companies already familiar with structured data taxonomies. That same commenter added that the structured data requirement would require firms to hire additional personnel and expend substantial resources to comply.[351] This commenter stated that the result of XBRL tagging could be achieved through lower cost means, such as PDF documents which ''can be searched and redlined with ease.'' [352] The commenter stated that XBRL requirements will require firms to overhaul their entire timelines for preparing and submitting reports because firms will need to provide service providers and vendors with time (often three-to-four business days) to conduct XBRL tagging, rendering, and processing.[353] That same commenter stated that the primary benefits of Inline XBRL tagging involve review of numerical submissions and that tagging is not necessary given the narrative format of CCO reports.[354]

Requiring CCO reports to be submitted in Inline XBRL structured data format facilitates access to the information included on the CCO reports, enabling Commission staff to perform more efficient retrieval, aggregation, and comparison across different SBS Entities and time periods, as compared to an unstructured PDF, HTML, or ASCII format requirement for the reports.[355] One commenter disagreed that an Inline XBRL requirement provides benefits for the CCO report.[356] This commenter characterized the CCO report as an unstructured, narrative-based report, and stated that an Inline XBRL requirement does not facilitate analysis or comparison because narrative reports do not contain standardized, easily comparable elements.[357]

The Commission disagrees with this point. While CCO reports were not previously ''structured'' in the machine-readable sense, there are clearly delineated regulatory subparagraphs (specifically, Rule 15fk–1(c)(2)(i)(A) through (E) under the Exchange Act) that designate the minimum content which CCO reports must contain.[358] The Inline XBRL requirement under the amended rules will involve the creation of a taxonomy including specific tags that map onto each of these subparagraphs. SBS Entities' use of these tags to identify each particular disclosure in the CCO report will enable staff to analyze all (or subsets of) SBS Entities' disclosures in response to any particular subparagraph of interest, including to determine whether SBS Entities have complied with each substantive component of the CCO report required under Rule 15fk–1(c)(2)(i). This will make it easier for staff to retrieve, sort, filter, compare, or aggregate the disclosures on CCO reports, which frequently contain

[343] Rule 3a71–6 under the Exchange Act permits the Commission to determine that registered non-U.S. major security-based swap participants may satisfy certain requirements under the Exchange Act section 15F and the rules and regulations thereunder by complying with comparable non-U.S. requirements. 17 CFR 240.3a71–6. SBS Entities that elect to fulfill the requirements of Rule 15fk–1 through substituted compliance must provide home country report(s) described in the relevant Order Granting Substituted Compliance, in English. *See, e.g.,* Order Granting Conditional Substituted Compliance in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers Subject to Regulation in the Swiss Confederation, Exchange Act Rel. No. 93284, 86 FR 57455, 57466. *See also* discussion *supra* at section I.F.

[344] *See* XBRL Letter at 9.

[345] *See id.*

[346] *See* SIFMA 5/22/2023 Letter at 13.

[347] *See* Rule 83, 17 CFR 200.83. The commenter also requested that the Commission revise its Rules, specifically, Exchange Act Rule 24b–2 to allow firms to request confidential treatment when submitting the CCO report in EDGAR, rather than submitting a separate request under Commission Rule 83, which provides a process for requesting that information not be disclosed in response to Freedom of Information Act requests. *See id.* at 10. However, Rule 24b–2 applies when the Commission needs to decide whether information will be disseminated to the public upon the filing of the information. 17 CFR 240.24b–2. CCO reports are not provided to the public upon submission. *See* 17 CFR 240.15fk–1(c)(ii). The Commission's website provides information for security-based swap dealers seeking to request confidential treatment for CCO reports, including the email address for submitting email requests for confidentiality under Rule 83. *See* Requesting Confidential Treatment for CCO Annual Reports, *SEC.gov* | Frequently Asked Questions Regarding Chief Compliance Officer Annual Reports Submitted by Security-Based Swap Dealers and Major Security-Based Swap Participants. *See also infra* section VII.A (discussing, among other things, security enhancements to EDGAR).

[348] *See* XBRL Letter at 9.

[349] *See id.*

[350] *See id* at 10.

[351] *See* SIFMA 5/22/2023 Letter at 4.

[352] *See id.* at 6.

[353] *See id.* at 5.

[354] *See id.* at 6.

[355] For further discussion of the structured data requirements, *see infra* section VII.A.

[356] *See* SIFMA 5/22/2023 Letter at 7.

[357] *See id.*

[358] *See* 17 CFR 240.15fk–1(c)(2)(i)(A) through (E).

lengthy narratives, to gauge the soundness of SBS Entity compliance programs (*e.g.,* by enabling staff to broadly identify any areas for improvement that were widely cited by SBS Entities in their CCO reports in one reporting period, and then identify whether SBS Entities generally made changes to their policies and procedures to implement that improvement in the subsequent reporting period).[359] The application of specific tags to narratives in the CCO reports will also enable to staff to create customized reports that will facilitate a more comprehensive approach to risk identification and analysis. In this manner, staff will be better able to assess compliance with the Exchange Act and rules and regulations thereunder applicable to SBS Entities.[360]

As discussed elsewhere in this release, the Commission also disagrees that the structured data requirement would require firms to hire additional personnel and expend substantial resources to comply.[361] That said, if SBS Entities encounter unreasonable effort or expense complying with this aspect of the rule, the Commission encourages those entities to consult with Commission staff or request an extension of time under the existing standard and process set forth in Rule 15fk–1(c)(2)(iii).[362]

Substituted Compliance Considerations

One commenter stated that ''SBS Entities that rely on substituted compliance pursuant to Exchange Act Rule 3a71–6 would face particularly undue timing pressures, as substituted compliance orders generally require these firms to submit their home country CCO Reports no later than 15 days from submission to the entity's management body.'' [363] That commenter added that if the Commission does require ''firms to use specific tags in their CCO Report [. . .] it should allow substituted compliance firms to continue submitting home-country reports in their current form.'' [364] Another commenter stated that the Commission should require a single process for all CCO reports, because ''[a]llowing reporting entities to report in different formats, using different standards, will lead to confusion and added expense in the marketplace.'' [365] That commenter continued that ''[p]rocessing data in structured, machine-readable XBRL format takes seconds'' compared to much-longer processing times for HTML, PDF, and image files.[366] As stated previously, requiring CCO reports to be submitted in Inline XBRL structured data format facilitates access to the information included on the CCO reports, enabling automated data retrieval and aggregation, which allows Commission staff to perform more efficient analysis and comparison of the disclosures across different SBS Entities and time periods.[367] These benefits apply equally whether an SBS Entity is complying directly with Rule 15fk–1 or relying on a substituted compliance order.[368] With respect to the comment raised about undue timing pressure, that same commenter acknowledged that any actual timing challenge was unknown and based on an assumption about the ''number of tags typically associated with Inline XBRL reports'' and expectation that the required changes would be quite broad.[369]

The Commission disagrees with the commenter. The substance of the commenter's objection is about the perceived burden and costs associated with the anticipated taxonomy, which we address below,[370] rather than an identified timing concern. Permitting SBS Entities relying on substituted compliance to avoid the structuring requirement, while requiring SBS Entities complying directly with Rule 15fk–1 to submit structured CCO reports, would decrease the staff's ability to inspect, examine, and supervise the compliance of those SBS Entities.[371] It would also hamper the staff's ability to perform more efficient retrieval, aggregation, and comparison across different SBS Entities and time periods.[372] Finally, permitting SBS Entities relying on substituted compliance to avoid the structuring requirement for home country reports would result in an uneven framework that imposes additional requirements on SBS Entities complying directly with Rule 15fk–1.

SBS Entities, including those relying on substituted compliance, will not be required to submit CCO reports in Inline XBRL format until January 1, 2026, which will give SBS Entities sufficient time to adapt to the new Inline XBRL requirements and enable the development of systems or tools that can generate Inline XBRL tagging of those reports, including home country reports submitted by SBS Entities relying on substituted compliance. SBS Entities will also have an opportunity to provide technical feedback on the proposed taxonomies once they are published (prior to January 1, 2026), including whether SBS Entities relying on substituted compliance anticipate specific technical difficulties as a result of those proposed taxonomies.[373] While technical feedback on the proposed taxonomies will be welcomed and considered, the fundamental requirement to provide CCO reports using structured data will not change during that process. Any input on confusion raised by the tagging process can be provided as technical feedback after the proposed taxonomies are published. finally, to the extent SBS Entities relying on substituted compliance can demonstrate difficulty submitting structured home country

[359] *See* 17 CFR 240.15fk–1(c)(2)(i)(B) and (C).

[360] *See* Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29959, 30054 (May 13, 2016) (stating that the proposed (and subsequently adopted) requirements for Rule 15fk–1, including the requirement for the chief compliance officer to prepare an annual compliance report that is submitted with the Commission, ''underscore[s] the central role that sound compliance programs play to ensure compliance with the Exchange Act and rules and regulations thereunder applicable to security-based swaps''); *see also* Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 64766 (June 29, 2011), 76 FR 42395, 42435 (July 18, 2011).

[361] For further discussion of costs related to Inline XBRL requirements, *see infra* section VII. and section X.C.2.

[362] 17 CFR 240.15fk–1(c)(2)(iii). Extensions of the deadline to submit CCO reports will be granted at the discretion of the Commission. *Id.*

[363] *See* SIFMA 5/22/2023 Letter at 5.

[364] *See id.* at 7.

[365] *See* XBRL Letter at 9.

[366] *See id.* at 10.

[367] For further discussion of the structured data requirements, *see infra* section VII.A.

[368] For further discussion of structured data requirements for firms relying on substituted compliance, *see supra* section I.F.

[369] *See* SIFMA 5/22/2023 Letter at 5.

[370] *See infra* sections X.C.2.b, IX.D.9 and IX.D.15. As further explained in the Economic Analysis and Paperwork Reduction Act, the Commission revised its estimates in the initial compliance year to account for the additional burden of determining which narrative descriptions within its home country report correspond to descriptions addressed in Rule 15fi–1(c)(2) and must therefore be tagged. However, on an ongoing basis firms that rely on substituted compliance will incur the same costs to tag home country reports as firms that do not rely on substituted compliance, because in each case, the firm will incur the cost of applying Inline XBRL tags to the same information required by the Exchange Act. *See infra* note 685 (outlining that the total annual hour burden is 98 hours per respondent in the initial year, 5 hours of which is structuring, and 96 hours per respondent in subsequent years, 3 hours of which is structuring).

[371] *See, e.g.,* Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers Subject to Regulation in the Swiss Confederation, 86 FR 57455, at 57456 (Oct. 15, 2021).

[372] *See* Proposing Release at 23959. *See also infra* section X.C.2.b.

[373] *See infra* sections VII.A (discussing the draft taxonomy publication process) and X.C.2.b (specifying estimated cost ranges for the structuring of CCO reports and home country reports, with expected costs ranging from approximately $1,200 to $6,200 in the first year of compliance).

reports within the 15-day time frame without incurring unreasonable effort or expense, the Commission will consider requests for an extension of time in order to satisfy the structuring requirement.

VI. Amendments Regarding the FOCUS Report and Signature Requirements in Rule 17a–5, 17a–12, and 18a–7 Filings

This release adopts a number of amendments to the FOCUS Report to correct technical errors and provide clarifications, with the goal of improving the accuracy of the information the Commission collects on the FOCUS Report. In addition, the Commission is allowing electronic signatures in Rule 17a–5, 17a–12, and 18a–7 filings, including the FOCUS Report. The amendments are described in more detail below.

A. Corrective and Clarifying Amendments to the FOCUS Report

1. Computation of Minimum Regulatory Capital Requirements

Rule 15c3–1 instructs a broker-dealer that is also a futures commission merchant (''FCM'') to report the greater of the broker-dealer ratio requirement or ''4 percent of the funds required to be segregated'' pursuant to the CFTC rules.[374] However, the Calculation of Minimum Net Capital Requirement subsection in the broker-dealer Computation of Minimum Regulatory Capital Requirements section of the FOCUS Report Part II does not include a reference to the 4% of segregated funds ratio even though this section of the form is intended to document a firm's Rule 15c3–1 calculation. To align the FOCUS Report's net capital computation with Rule 15c3–1, the Commission proposed to add a line for the reporting of 4% of segregated funds and to renumber other lines to clarify in the FOCUS Report when certain computations should be made as set forth in Rule 15c3–1's net capital computation. These changes were intended to conform the FOCUS Report to Rule 15c3–1, with no substantive impact on the broker-dealer's required capital computation under Rule 15c3–1.[375] The Commission received no comment on renumbering lines to clarify at what point in the net capital computation to compute the percentage of the risk margin amount (if applicable) and the 10% addition for broker-dealers engaged in reverse repurchase agreements, and for the reasons discussed above, is adopting these changes as proposed.

The Proposing Release requested comment on whether to amend Rule 15c3–1, as well as Rule 15c3–1d which also cross-references the CFTC's segregated funds requirement in identifying conditions for satisfactory subordination agreements, and solicited comment on whether the Commission should amend Rules 15c3–1 and 15c3–1d to remove references to these requirements that are no longer in effect under the CFTC's rules. The Commission received comment stating that the Commission should remove references to the CFTC's segregated funds requirement from Rules 15c3–1 and 15c3–1d. The commenter stated that the 4% of segregated funds requirement ''is an outdated, irrelevant requirement, as the CFTC has not imposed the 4% requirement for nearly two decades.'' [376] In light of the comments received, which merit further consideration, the Commission is not amending Rules 15c3–1 and 15c3–1d to remove references to the CFTC's segregated funds requirement at this time.

2. Statement of Income (Loss) or Statement of Comprehensive Income, as Applicable

The Commission also proposed to amend FOCUS Report Part II's income statement. Prior to these amendments, the income statement only provided fields for reporting revenue from securities commissions, even though firms may generate revenue from other types of commissions (*e.g.,* commodity transactions and insurance products). Because it is important for the Commission to receive comprehensive data on all types of commission revenue to ensure compliance with relevant rules and properly supervise firms, the Commission proposed to revise the revenue section of the income statement to account for these other types of commission revenue.[377]

One commenter generally requested that the Commission update the FOCUS Report for consistency with generally accepted accounting principles (''GAAP'') and coordinate more closely with the FINRA and other regulators when updating the FOCUS Report, pointing out as an example that FOCUS Report Part II's income statement is missing information found in FINRA's Form SSOI.[378] The changes to FOCUS Report Part II have been coordinated with FINRA and CFTC staff, and are intended to align this section of the form to be more consistent with FINRA's Form SSOI's key revenue and expense categories but is not an exact mirror of FINRA's Form SSOI, as Form SSOI will continue to be a source of detailed income statement information. Further, the Commission has endeavored to keep the FOCUS Report consistent with current accounting principles including GAAP.[379] The Commission received no other comment on this proposal and for the reasons discussed above, is adopting it as proposed with unique line-item numbers assigned to the new lines, and one correction to the formula in line 1H.[380]

3. Computation of CFTC Minimum Capital Requirements

CFTC rules permit a firm that is registered with the CFTC as an introducing broker, an FCM, or a swap dealer, and also registered with the Commission as a broker-dealer or SBS Entity, to file the FOCUS Report in lieu of the unaudited financial reports required under the CFTC regulations.[381] Because the CFTC is not receiving its own form from these dual registrants and relies upon the Commission's FOCUS Report as a source of data for these firms, the Commission's FOCUS Report includes several sections or schedules set forth in the CFTC's Form 1–FR that address the segregation of customer funds and the calculation of CFTC minimum capital requirements to ensure the CFTC receives complete information about these firms.[382]

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[374] *See* 17 CFR 240.15c3–1(a)(1)(iii).

[375] The Commission proposed the following changes to the Calculation of Minimum Net Capital Requirement subsection in the Computation of Minimum Regulatory Capital Requirements section of FOCUS Report Part II: (1) delete old Line 5Bi; (2) add new Line 5C; (3) add a subtotal line as new Line 5D and renumber subsequent lines and line references accordingly; and (4) move old Line 5D to new Line 7 and renumber subsequent lines and line references accordingly.

[376] *See* Letter from Kyle Brandon, Managing Director and Head of Derivatives Policy, Securities Industry and Financial Markets Association (Nov. 21, 2023) (''SIFMA 11/21/2023 Letter'') at 1–2.

[377] The Commission proposed to revise Line 1E and add new Lines 1F–1H in the Revenue subsection in the Income Statement section of FOCUS Report Part II.

[378] *See* Integrated Solutions Letter at 1–2.

[379] *See, e.g.,* Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers, Exchange Act Release No. 87005 (Dec. 16, 2019), 84 FR 68550, 68676 (Dec. 16, 2019) (amending FOCUS Report Part II to incorporate the concept of LLC interests in the Ownership Equity subsection); Disclosure Update and Simplification, Exchange Act Release No. 83875 (Aug. 17, 2018), 83 FR 50148, 50227 (Oct. 4, 2018) (amending FOCUS Report Part II to incorporate the concept of comprehensive income).

[380] The formula in line 1H is being corrected so that it now reads ''(sum of Lines 1E, 1F, and 1G)'' instead of ''(sum of Lines 1E and 1H)''.

[381] *See* 17 CFR 1.10(h); 17 CFR 23.105(d)(3).

[382] *See* FOCUS Report Part II's Computation of CFTC Minimum Capital Requirements, Statement of

Continued

While FCMs are required to complete the Computation of CFTC Minimum Capital Requirements section of FOCUS Report Part II, the FOCUS Report fails to instruct CFTC-registered introducing brokers or swap dealers not also registered as an FCM (''stand-alone introducing brokers'' or ''stand-alone swap dealers,'' respectively) to complete this section of the form. Therefore, the Commission proposed to require CFTC-registered introducing brokers and swap dealers that are also registered with the Commission as a broker-dealer or SBS Entity to complete the Computation of CFTC Minimum Capital Requirements section of FOCUS Report Part II. The Commission received no comment on this change and for the reasons discussed above, is adopting it as proposed with unique line-item numbers assigned to the new lines.

4. Technical Corrections to FOCUS Report Parts IIA and II

The Commission is making two technical corrections to FOCUS Report Part IIA. First, lines 11 and 15 of the Computation of Net Capital Requirement are being updated to replace the incorrect cross-reference to line 19 with a corrected cross-reference to line 18 so that the form matches the requirements of Rule 15c3–1.[383] Second, in response to comment received during a meeting with FINRA representatives,[384] the Commission is amending FOCUS Report Part IIA to require broker-dealers using the alternative method to compute net capital to report the percentage of debt to debt-equity total.[385] This amendment is appropriate because it correctly conforms the FOCUS Report Part IIA to paragraph (d) of Rule 15c3–1, which requires that all broker-dealers compute the percentage of debt to debt-equity total.

The Commission is making one technical correction to FOCUS Report Part II to add a new line item in the Computation for Determination of Customer Reserve Requirements and the Computation for Determination of PAB Requirements sections to align these sections of the FOCUS Report Part II with the amendments to Rule 15c3–3a that the Commission adopted in December 2023.[386] The same release amended Rule 15c3–3a to permit margin required and on deposit at a covered clearing agency for U.S. Treasury securities to be included as a debit item in the customer and PAB reserve formulas, subject to certain conditions.[387] The technical amendment to the FOCUS Report Part II reflects the update of the schedules to reflect adoption of the new debit item.[388]

B. Harmonizing FOCUS Report Part IIC With the Call Report

FOCUS Report Part IIC requires SBS Entities that are dually registered with a prudential regulator (''bank SBS Entities'') to report certain information domestic banks already report on Federal Financial Institutional Examination Council (''FFIEC'') Form 031 (also known as the ''Call Report''),[389] in an effort to reduce the administrative burden of completing FOCUS Report Part IIC. The FOCUS Report Part IIC is closely modelled on FFIEC Form 031, and when the same information is solicited in both FFIEC Form 031 and FOCUS Report Part IIC, the same line-item number is used in both forms, except that the FOCUS Report Part IIC line item ends with an additional ''b'' character.[390]

However, as discussed in the Proposing Release, since FOCUS Report Part IIC was adopted, FFIEC Form 031 has been updated resulting in inconsistencies between FOCUS Report Part IIC and FFIEC Form 031. Therefore, the Commission proposed to amend the assets and liabilities subsections of the Balance Sheet section,[391] the Regulatory Capital section,[392] and the Income Statement section [393] of FOCUS Report Part IIC to harmonize FOCUS Report Part IIC with FFIEC Form 031. The Commission received comment supporting these proposed changes and encouraging further amendments to conform FOCUS Report Part IIC to additional changes made to FFIEC Form 031 since the date of the Proposing Release.[394] The Commission agrees that FOCUS Report Part IIC should align with FFIEC Form 031. Therefore, in addition to adopting its proposed changes to FOCUS Report Part IIC, in response to the comments the Commission is also amending the assets subsection of the Balance Sheet section [395] and the Income Statement section [396] of FOCUS Report Part IIC to match the current version of FFIEC Form 031.

One commenter asked the Commission to require FOCUS Report Part IIC to be filed in XBRL format since FFIEC Form 031 is already required to be prepared in XBRL format.[397] While this would make FOCUS Report Part IIC more consistent with FFIEC Form 031, this change would make the format of FOCUS Report Part IIC inconsistent with the format of FOCUS Report Parts

Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges, Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act, Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts, Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7.

[383] *See* lines 11 and 15 of the Computation of Net Capital Requirement section of FOCUS Report Part IIA.

[384] *See* Memorandum to file number S7–08–23 from Valentina Minak Deng regarding meeting with representatives of FINRA (Oct. 4, 2023), *available at https://www.sec.gov/comments/s7-08-23/s70823-267599-644062.pdf.*

[385] *See* new line 26 of the Computation of Alternate Net Capital Requirement section of FOCUS Report Part IIA.

[386] *See* 17 CFR 240.15c3–3a; Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule with Respect to U.S. Treasury Securities, Final Rule, Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (''Treasury Clearing Adopting Release''). The technical amendment to Rule 15c3–3a inserted a new Line 17 in both the customer and PAB reserve formulas as a new debit item for margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Exchange Act (15 U.S.C. 78q–1) resulting from the following types of transactions in U.S. Treasury securities in customer accounts that have been cleared, settled, and novated by the clearing agency: (1) purchases and sales of U.S. Treasury securities; and (2) U.S. Treasury securities repurchase and reverse repurchase agreements. *See* Treasury Clearing Adopting Release, 89 FR at 2826. *See also* Note H to Rule 15c3–3a. As a result of the new line items, the remaining line items in the computations of the customer and PAB reserve formulas are renumbered to reflect the addition of the new debit item.

[387] *See* Treasury Clearing Adopting Release, 89 FR at 2826.

[388] The Commission is adding Line 17 and renumbering the subsequent lines and cross-references to those lines in the Computation for Determination of Customer Reserve Requirements and Computation for Determination of PAB Requirements sections of FOCUS Report Part II.

[389] *See* Federal Financial Institutions Examination Council, Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices—FFIEC 031, *available at https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_202203_f.pdf.*

[390] *See* Form X–17A–5 Part IIC.

[391] The Commission proposed the following changes to the Balance Sheet section of FOCUS Report Part IIC: (1) add new Line 2C; (2) revise Lines 4B, 4D, 10, 15, and 16; and (3) delete Lines 10A and 10B.

[392] The Commission proposed the following changes to the Regulatory Capital section of FOCUS Report Part IIC: (1) delete Line 4 and renumber subsequent lines; (2) revise renumbered Lines 4, 9, and 10, and parenthetical note after Capital Ratios subheading; and (3) add new Line 8.

[393] The Commission proposed the following changes to the Income Statement section of FOCUS Report Part IIC: (1) revise Line 7; and (2) add new Lines F.i, F.ii, G.i, and G.ii, and delete Lines F and G's fill-in fields due to addition of sublines.

[394] *See* SIFMA 5/22/2023 Letter at 8.

[395] The Commission is revising Lines 2A and 2B of the Balance Sheet section of FOCUS Report Part IIC.

[396] The Commission is revising Lines 6, 9.F., 9.G., 9.G.i., and 9.G.ii. of the Income Statement section of FOCUS Report Part IIC.

[397] *See* XBRL Letter at 10.

IIA and II. More specifically, there is already a long-standing system in place for receiving, distributing, and using FOCUS Report data, and converting FOCUS Report Part IIC to a separate format would be disruptive to both filers and regulators who are already familiar with the current process in the context of the FOCUS Report and use the current system to compare historical and current data. Finally, the Commission did not receive comment from any bank SBS Entities indicating that such a change would ameliorate or otherwise further reduce the burden associated with filing FOCUS Report Part IIC. Therefore, the Commission is not requiring FOCUS Reports Part II, IIA, and IIC to be filed in XBRL format.

C. OTC Derivatives Dealer FOCUS Report Filing Requirement

Most broker-dealers file the FOCUS Report electronically on the FINRA eFOCUS system. These broker-dealers file the FOCUS Report pursuant to a plan established by the broker-dealer's SRO, the procedures and provisions of which have been submitted to and declared effective by the Commission pursuant to paragraph (a)(3) of Exchange Act Rule 17a–5. SBS Entities that are not dually registered as broker-dealers are subject to a Commission order that requires these firms to file the FOCUS Report electronically on the system developed by the Commission, the ''SEC eFOCUS system.'' [398]

OTC derivatives dealers are a type of broker-dealer that engages in limited securities activities and is exempt from SRO membership.[399] OTC derivatives dealers are required to file FOCUS Report Part II, but unlike broker-dealers and non-broker-dealer SBS Entities, OTC derivatives dealers were required, prior to these amendments, to file FOCUS Report Part II in paper ''at the Commission's principal office in Washington, DC.'' [400] Given the similarities between OTC derivatives dealers and the broker-dealers and non-broker-dealer SBS Entities filing FOCUS Report Part II, the Commission proposed to amend paragraph (a)(2) of Rule 17a–12 to require OTC derivatives dealers to file FOCUS Report Part II on the SEC eFOCUS system maintained by FINRA. The Commission received comment supporting this amendment [401] and for the reasons discussed above, is adopting it as proposed.[402]

D. Signature Requirements in Rule 17a–5, 17a–12, and 18a–7 Filings

1. Number of Signatures on FOCUS Report

The cover pages of Parts II, IIA, and IIC of the FOCUS Report include signature lines for the filer's principal executive officer, principal financial officer, and principal operations officer (or their comparable officers).[403] The Commission proposed requiring only two of the three principal officers' signatures in an effort to balance the Commission's desire for individual accountability with the burden on the filer.

One commenter responded with a request that the Commission require no signatures on the FOCUS Report since FOCUS Reports filed through FINRA's eFOCUS system do not contain signatures at all.[404] The fact that FINRA's eFOCUS system does not allow signatures in the uploaded filing does not make it unnecessary for firms to retain the signed FOCUS Report in their books and records as is required by the form.[405] Requiring an electronic signature on the related cover pages of the FOCUS Report is appropriate because it helps ensure that the broker-dealer's senior executives are reviewing the FOCUS Report. In addition, the amendment to require fewer signatures appropriately minimizes the burden associated with the benefit of this requirement.

Another commenter requested that the Commission require only one signature on the FOCUS Report since reviewing a firm's FOCUS Report may not fall within the responsibilities of that firm's principal operations officer, and it is unnecessary to obtain the signature of both the principal executive officer and principal financial officer.[406] After further consideration, the Commission agrees with the commenter that obtaining two such signatures is unnecessary because any individuals that substantially contribute to or cause violations of these rules may be subject to potential liability for aiding and abetting or causing violations by the firm even if they do not sign the audit documents.[407] In addition, the Commission agrees that a firm's principal operations officer's responsibilities may not include the FOCUS Report. Therefore, the Commission is modifying the proposed signature requirement so that the instructions to Parts II, IIC, and IIA of the FOCUS Report require the signature of only the firm's principal executive officer or principal financial officer (or their comparable officers), instead of requiring the signature of two principal officers.[408]

2. Electronic Signatures in Rule 17a–5, 17a–12, and 18a–7 Filings

The Commission proposed to allow signatories on Rule 17a–5, 17a–12, and 18a–7 filings to choose between providing either manual or electronic signatures.[409] The Commission proposed that the signing process for an electronic signature needs to, at a minimum: ''(1) Require the signatory to present a physical, logical, or digital credential that authenticates the signatory's individual identity; (2) Reasonably provide for non-repudiation of the signature; (3) Provide that the signature be attached, affixed, or otherwise logically associated with the signature page or document being signed; and (4) Include a timestamp to record the date and time of the signature.'' [410] These requirements, which were first identified in the Commission's Electronic Signatures Release, are needed so that the Commission can verify the authenticity of the electronic signature, but are intended to be technologically neutral and allow for different types and forms of electronic signatures, provided that the signing process satisfies the aforementioned conditions that relate to the validity and enforceability of an electronic signature.[411]

Commenters unanimously supported electronic signatures,[412] and for the reasons discussed above, the Commission is adopting these

[398] *See* Order Designating Financial Industry Regulatory Authority, Inc., to Receive Form X–17A–5 (FOCUS Report) from Certain Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 88866 (May 14, 2020), 85 FR 29993 (May 19, 2020).

[399] *See* 17 CFR 240.3b–12.

[400] *See* 17 CFR 240.17a–12(a).

[401] *See* XBRL Letter at 10.

[402] *See* paragraph (a)(2) of Rule 17a–12, as amended.

[403] FOCUS Report Part IIA uses slightly different wording: Principal Executive Officer or Managing Partner, Principal Financial Officer or Partner, and Principal Operations Officer or Partner.

[404] *See* Integrated Solutions Letter at 1–2.

[405] *See* FOCUS Report Part II cover page; FOCUS Report Part IIA cover page; FOCUS Report Part IIC cover page. *See also* 17 CFR 240.0–1(a)(4) (stating that the Commission's rules and regulations include ''reports and the accompanying instructions thereto'').

[406] *See* SIFMA 5/22/2023 Letter at 9.

[407] *See, e.g.,* 15 U.S.C. 78t(e); 15 U.S.C. 78u–3(a).

[408] *See* instructions to Form X–17A–5 Part II, Form X–17A–5 Part IIC, and Form X–17A–5 Part IIA, as amended.

[409] *See* amendments to paragraphs (f)(3)(v)(B), (i)(1)(ii), and (p) of Rule 17a–5; paragraphs (g)(2), (j)(1), and new paragraph (q) of Rule 17a–12; paragraphs (e)(3)(v)(B), (h)(1)(ii), and (j) of Rule 18a–7; FOCUS Report Part IIA and instructions; FOCUS Report Part II instructions; FOCUS Report Part IIC instructions.

[410] *See* amendment to instructions for FOCUS Report Parts II, IIA, and IIC.

[411] *See* Electronic Signatures Release, 85 FR at 78225.

[412] *See, e.g.,* Integrated Solutions Letter at 3; SIFMA 5/22/2023 Letter at 9.

amendments as proposed. However, one commenter asked the Commission to identify an example that satisfies its electronic signature requirements.[413] An example of an electronic signature using this signing process is Adobe Acrobat's digitally signed certificate, when the document is locked after signing.[414] The same commenter asked the Commission to confirm that bank SBS Entities can use electronic signatures in the FOCUS Report, which the Commission indeed confirms.[415]

VII. Amendments to Regulation S–T (Including Structured Data Requirements) and Rule 24b–2

A. Amendments to Regulation S–T (Including Structured Data Requirements)

The Commission proposed to amend Rule 101(a) of Regulation S–T to designate Form X–17A–5 Part III, broker-dealer supplemental reports filed pursuant to paragraph (k) of Rule 17a–5, OTC derivatives dealer supplemental reports filed pursuant to paragraphs (k), (l), and (m) of Rule 17a–12, Form 17–H, Form X–17A–19, notices (and withdrawals of notices) filed pursuant to Rule 3a71–3(d)(1)(vi), notices (and amendments, including notices of dispute termination) submitted to the Commission pursuant to Rule 15fi–3(c), and compliance reports submitted with the Commission pursuant to Rule 15fk–1(c)(2)(ii)(A) (''Covered EDGAR Documents'') as mandated electronic submissions.[416] These amendments would incorporate the new electronic submission requirements into the existing structure of Regulation S–T and would ensure that the EDGAR rules in Regulation S–T apply to the forms and other documents required to be submitted electronically on EDGAR. The filings would be added as mandatory electronic submissions under Regulation S–T; however, pursuant to the existing procedures in Rules 201 and 202 of Regulation S–T, filers of these filings (except for notices and withdrawals of notices filed pursuant to Rule 3a71–3(d)(1)(vi)) could request temporary or continuing hardship exemptions if they experience unanticipated technical difficulties that prevent the timely submission of an electronic filing.[417] For example, a filer could request temporary and continuing hardship exemptions for the inability to timely prepare and submit the Interactive Data File (*i.e.,* the inability to timely structure the filing or submission in Inline XBRL).[418]

Most commenters supported filing the annual reports and related filings electronically on EDGAR,[419] although one commenter encouraged the Commission to address EDGAR's technical deficiencies, stating that ''[h]over-over definitions and links to relevant rules should [ ] be standard.'' [420] The Commission has stated that it has ''engaged in a multi-year, multi-phase effort to modernize the EDGAR system, including both internal and public-facing components. Security and modernization enhancements were deployed in June 2020, focusing on technology upgrades internal to the system.'' [421] Thus, individuals can hover over each field on an EDGAR form for additional information, and EDGAR provides a link to the instructions for the applicable SEC form. Given the benefits of electronic filing discussed in the Proposing Release, commenters' ample support for electronically filing, and the fact that the deficiencies identified by this commenter have already been addressed, the Commission adopts as proposed the requirement to file these documents electronically on EDGAR.

The Commission also proposed to amend Rule 101(d) of Regulation S–T to require that all documents, including any information with respect for which confidential treatment is requested, filed pursuant to paragraphs (d) or (k) of Rule 17a–5, paragraphs (b), (k), (l), or (m) of Rule 17a–12, Rule 17a–19, Rule 17h–2T, or paragraph (c) of Rule 18a–7, and all VDNs submitted pursuant to paragraph (c) of Rule 15fi–3,[422] be filed or submitted in electronic format. This is intended to ensure that electronically submitted filings are incorporated into the existing structure of Regulation S–T. The Commission received no specific comment on this proposal and for the reason discussed above, is adopting it as proposed, but with one additional technical modification. As stated above, the Commission is amending Rule 101(a) to include Compliance Reports submitted to the Commission pursuant to Rule 15fk–1(c)(2)(ii)(A) (''Covered EDGAR Documents'') as mandated electronic submissions. The proposing release explained that the EDGAR rules in Regulation S–T would apply to the forms and other documents proposed to be submitted electronically on EDGAR; the proposed rule text, however, did not include a related amendment to Rule 101(d) adding the reports submitted pursuant to Rule 15fk–1(c)(2)(ii)(A). Consistent with the proposing release's discussion, the Commission is making that technical modification to add that language to the rule text so that reports submitted pursuant to Rule 15fk–1(c)(2)(ii)(A) are included in Rule 101(d).[423]

Structured Data Requirements

The Commission is also amending Rule 405 of Regulation S–T to implement the Inline XBRL requirements.[424] Rule 405 sets forth the Interactive Data File requirements for Commission filings, and specifies that Inline XBRL is the structured data language that must be used for Interactive Data Files.[425] The Commission's amendments expand Rule 405 of Regulation S–T to add Inline XBRL requirements for CCO reports and for portions of Form X–17A–5 Part III

[413] *See* SIFMA 5/22/2023 Letter at 9.

[414] *See* Proposing Release at 23962 *n.* 314.

[415] *See* instructions to FOCUS Report Part IIC, as amended.

[416] The Commission is also adopting a technical update to Rule 100(c) of Regulation S–T, 17 CFR 232.100(c), to update the name of the Division of Trading and Markets from the previously used Division of Market Regulation.

[417] *See* 17 CFR 232.201 and 202.

[418] *See* 17 CFR 232.201(c) and 17 CFR 232.202.

[419] *See, e.g.,* SIFMA 5/22/2023 Letter at 13.

[420] *See* Sage Letter.

[421] *See* Annual Report on SEC website Modernization Pursuant to Section 3(d) of the 21st Century Integrated Digital Experience Act (Dec. 2022), available at *https://www.sec.gov/files/21st-century-idea-act-report-2022.pdf.*

[422] The Commission is modifying the lead-in sentence of final Rule 101(d) of Regulation S–T to reflect that some of the items listed in the amended rule are submissions (*e.g.,* VDNs) rather than filings. Additionally, the amendments to Rule 101(d) of Regulation S–T incorporate changes from the proposal to address revisions to Rule 101(d) regarding Form N–PX that became effective on July 1, 2024. *See* Securities Act Release No. 11131 (Nov. 2, 2022), 87 FR 78770, 78787 n. 204 (Dec. 22, 2022).

[423] We note that one commenter stated that the Commission must have adequate processes in place to ensure that compliance reports submitted pursuant to Rule 15fk–1(c)(2)(ii)(A) remain confidential. *See* SIFMA 5/22/2023 Letter at 13. As stated above, these reports are non-public, and the amendments do not change existing rules and processes with respect to confidential treatment of materials submitted to the Commission.

[424] The amendments to Rule 405 of Regulation S–T mirror the proposed amendments to Rule 405 of Regulation S–T, except for changes that have been made to: (i) preserve amended rule text from rules that were adopted after the Proposing Release was published; and (ii) correct two typographical errors. Specifically, the amendments to Rule 405 of Regulation S–T retain references to filings made by special purpose acquisition companies, security-based swap execution facilities, and unit investment trusts. *See* Securities Act Release No. 11265 (Jan. 24, 2024), 89 FR 14158 (Feb. 26, 2024); Exchange Act Release No. 98845 (Nov. 2, 2023), 88 FR 87156 (Dec. 15, 2023); Securities Act Release No. 11238 (Sept. 20, 2023), 88 FR 70436 (Oct. 11, 2023). The final amendments also correct the reference in proposed Rule 405(b)(5)(i) from ''§ 249.517 of this chapter'' to ''§ 249.617 of this chapter,'' and remove an extraneous reference to ''15fk–1'' in proposed Rule 405(a)(4).

[425] *See* 17 CFR 232.405. *See also* Proposing Release at 23964 (discussing the history of XBRL and Inline XBRL requirements for Commission filings).

and related annual filings, Form 17–H, Form 1, and Form CA–1.[426]

Inline XBRL Requirements

Form	Inline XBRL Requirements
Form CA-1	Schedule A, Exhibits C, F, H, J, K, L, M, O, R, S
Form 1	Exhibits D, E (in part), I
Form X-17A-5 Part III	All disclosures except facing page
Form 17-H	Item 4 (financial statements)
CCO reports	All disclosures

For Form CA–1, Schedule A and Exhibits C, F, H, J, K, L, M, O, R, S will be filed in Inline XBRL.[427] For Form 1, Exhibits D, E (in part), and I will be filed in Inline XBRL.[428] For Form X–17A–5 Part III, all disclosures except the facing page will be filed in Inline XBRL. For Form 17–H, Item 4 (the filer's financial statements) will be filed in Inline XBRL. Finally, for CCO reports, all of the required information will be submitted in Inline XBRL.[429]

The Commission is requiring some or all of each Covered SRO Form, the information required by Exchange Act Rule 19b–4(e), Form X–17A–19, Form X–17A–5 Part III, Form 17–H, and the VDNs to be provided in custom XML-based data languages rather than in Inline XBRL.[430] While the majority of EDGAR filings are filed or submitted in HTML or ASCII, certain EDGAR filings are filed or submitted using machine-readable, XML-based languages each of which is specific to the particular EDGAR document type being submitted.[431] For these custom XML filings in EDGAR, filers or submitters are typically provided the option to either submit the filing directly to EDGAR in the XML-based data language, or manually input their disclosures in an online web application and/or web form developed by the Commission that converts the completed form into an EDGAR-specific XML document.[432]

In addition to the custom XML documents that the Commission currently requires registrants to file on EDGAR, the Commission separately requires broker-dealers to post reports on order routing and execution on their own websites (*i.e.,* not on EDGAR) using an XML-based language specific to those reports.[433] In doing so, broker-dealers must use the custom XML schema (*i.e.,* data language) and associated PDF renderer that the Commission has published on its website. The Commission is amending Exchange Act Rule 19b–4(e) to require SROs similarly to post the information required under the rule on their own websites using the most recent versions of the related custom XML schema and the associated PDF renderer that the Commission will publish on its website.

Several commenters specifically addressed the proposed structured data requirements. One commenter supported the inclusion of structured data requirements, stating that processing data is significantly faster when the data is structured than when data is unstructured.[434] Another commenter stated that the use of structured data where appropriate for forms, reports, and notices provided by broker-dealers and SBS Entities, coupled with the required electronic filing or submission on EDGAR, would promote greater standardization and consistency in reporting and facilitate investor comparison and analysis of information across different entities.[435] By contrast, two commenters opposed the inclusion of structured data requirements, stating that such requirements would not provide benefits that justify the attendant burdens on filers.[436] These commenters' objections, and the Commission's

[426] *See supra* sections II, IV.A, and V.D.

[427] Schedule A to the execution page requires certain descriptive responses to complement the clearing agency's execution page disclosures. Exhibit C requires a description of the clearing agency's organizational structure. Exhibit F requires a description of material pending legal proceedings involving the clearing agency. Exhibit H requires the clearing agency's financial statements. Exhibit J requires a description of the clearing agency's services and functions. Exhibit K requires a description of the clearing agency's security measures and procedures. Exhibit L requires a description of the clearing agency's safeguarding measures and procedures. Exhibit M requires a description of the clearing agency's backup systems. Exhibit O requires a description of criteria governing access to the clearing agency's services and a description of the reasons for imposing such criteria. Exhibit R requires a schedule of prohibitions and limitations on access to the clearing agency's services. Exhibit S requires, if applicable, a statement explaining why the clearing agency should be exempt.

[428] Exhibit D requires the financial statements of the exchange's subsidiaries and affiliates. Exhibit E requires, in relevant part, a description of the manner of operation of the electronic trading system that the exchange uses to effect transactions (however, the structuring requirement would not include the copy of the users' manual). Exhibit I requires the exchange's financial statements.

[429] CCO reports must contain the specific narrative descriptions that Exchange Act Rule 15fk–1(c) requires. These descriptions must be tagged in Inline XBRL. Additionally, SBS Entities that provide the Commission home country reports in reliance on a Commission substituted compliance order related to the requirements under Section 15F(k) and Rule 15Fk–1 will need to tag any portions of the report that contain information corresponding to the descriptions required by Rule 15fk–1(c)(2)(i). If a firm relying on substituted compliance provides Rule 15fk–1(c) information in a report separate from, and in addition to, its home country report, it will only have to tag that separate report in Inline XBRL. Similarly, firms relying on substituted compliance for filing Form X–17A–5 Part III will only need to tag the information that Exchange Act Rule 18a–7(c) requires.

[430] The Commission is not adding a structured data requirement for the Covered Supplementary Materials or the notices required by Exchange Act Rule 3a71–3(d)(1)(vi). *See supra* sections III and V.B.

[431] Unlike the Inline XBRL requirements, the custom XML requirements for EDGAR documents are not explicitly set forth in a separate rule within Regulation S–T; instead, they are set forth in the EDGAR Filer Manual. As such, the amendments that expand Regulation S–T to require electronic filing or submission of the affected documents in accordance with the EDGAR Filer Manual also implement the custom XML requirements. *See* 17 CFR 232.101(a); 17 CFR 232.301. *See also* EDGAR Filer Manual, Volume II, Chapter 8. Current and Draft Technical Specifications, *available at https://www.sec.gov/edgar/filer-information/current-edgar-technical-specifications.*

[432] *See EDGAR Filer Manual,* Volume II, Chapters 8 and 9.

[433] *See* 17 CFR 242.606; 2020 Order Handling Data Schema and Report Renderer for Broker-Dealers, *available at https://www.sec.gov/structureddata/dera_taxonomies.*

[434] *See* XBRL Letter at 11.

[435] *See* Wohlfahrt Letter.

[436] *See* SIFMA 5/22/2023 Letter; Integrated Solutions Letter.

responses thereto, are discussed in further detail later in this section.

Requiring the Structured Documents to be filed or submitted in a structured data language will provide the same benefits to data users that have been observed from other structured data requirements in Commission rules. For example, structured data requirements for the aforementioned broker-dealer order routing disclosures have been leveraged by financial academics to compare execution quality across broker-dealers.[437] As another example, the Commission has used structured order execution disclosures to inform its rulemaking efforts.[438] Structured data language requirements for the Structured Documents will similarly make the reported disclosures more readily available, accessible, and comparable for investors, other market participants, and the Commission, as applicable. In addition, for those Structured Documents that will be filed or submitted on EDGAR (*i.e.,* all except for the Rule 19b–4(e) postings), the structured data requirements enable EDGAR to perform technical validations (*i.e.,* programmatic checks to ensure the documents are appropriately standardized, formatted, and complete) upon intake of the documents. This will improve the quality of the filed or submitted data by decreasing the incidence of errors (such as the omission of values from fields that should always be populated).

Structuring each Structured Document will enable functionality that would vary based on the type of disclosures included in each document. As discussed elsewhere in the release, structured numeric disclosures lend themselves to mathematical functionality, such as the identification of statistical outliers within a given disclosed metric to screen for potential areas of greater scrutiny.[439] Structured textual disclosures, on the other hand, lend themselves to period-over-period redline comparisons, targeted keyword searching, and more sophisticated sentiment analysis.[440]

One commenter opposed the structured data requirements on a general level and with respect to specific points.[441] The commenter stated that the structured data requirements would impose significant costs on market participants without providing a clear benefit.[442] The commenter stated further that the XBRL and custom XML requirements would require firms to expend substantial additional resources and undergo fundamental operational changes.[443] The commenter listed several specific changes that, in its view, the XBRL and XML requirements would require firms to undergo, including the hiring of additional personnel that are proficient in XBRL and XML, the development of processes for converting the relevant data into XBRL and XML and uploading that data to EDGAR, the training of new and existing personnel on these processes, and the overhauling of systems and operations to integrate the XBRL/XML production and processing.[444]

As the Commission explains in the discussion of structured data for Rules 17a–5, 18a–7, and 17a–12 above and the discussion of structured data costs in the Economic Analysis below, the Commission disagrees with the commenter that the structured data requirements will require firms to undergo all the described changes. Most firms will comply with custom XML requirements by completing fillable web forms on EDGAR; other firms will have the requisite sophistication to encode disclosures using custom XML schemas without the need for substantial additional training or hiring of personnel.[445] For Inline XBRL requirements, firms that outsource compliance with the structured data requirements to a third-party service provider will not need to hire additional personnel proficient in XBRL and XML, develop processes for converting data into XBRL and XML and uploading that data to EDGAR, train new and existing personnel on such processes, or overhaul systems and operations to integrate XBRL or XML production.

The commenter also stated that, in order to submit forms in XBRL, firms will generally need to hire third-party training providers, since firms often do not have these resources in-house.[446] The Commission disagrees because, as stated above, some firms will outsource XBRL compliance altogether, while other firms will use software tools that enable staff to apply Inline XBRL tags to regulatory documents. Firms that outsource compliance with structured data requirements to a third-party service provider rather than comply with the structured data requirements in-house will not need to hire additional personnel that are proficient in XBRL and XML, develop processes for converting the relevant data into XBRL and XML and uploading that data to EDGAR, train new and existing personnel on these processes, or overhaul systems and operations to integrate the XBRL/XML production, because the third-party service provider would take such actions as necessary.[447] Firms that instead comply with structured data requirements internally will not need to hire additional personnel that are proficient in XBRL, because these firms can license software tools that allow staff without XBRL proficiency to apply Inline XBRL tags to regulatory disclosures without any need to overhaul the firm's systems or operations. These firms will, however, likely need to implement processes for the use of such software tools and train staff on these processes. The Commission includes these process implementation and training costs in its estimates of initial structured data costs and burdens.[448] Accordingly, firms will not need to hire third-party training providers to teach staff how to encode data in XBRL.

The commenter further stated that many firms will need to purchase XBRL rendering and validation software and either purchase Inline XBRL tagging software or hire a third-party tagging service provider, and that the process of diligencing, negotiating with, and onboarding the numerous third-party vendors necessary to implement the structured data requirements would be very time-consuming and expensive.[449] The Commission agrees that firms will need to purchase Inline XBRL tagging software or hire a third-party tagging

[437] *See, e.g.,* Schwarz, Christopher and Barber, Brad M. and Huang, Xing and Jorion, Philippe and Odean, Terrance, *The ''Actual Retail Price'' of Equity Trades* (Sept. 14, 2022), *available at https://ssrn.com/abstract=4189239* (retrieved from SSRN Elsevier database).

[438] *See Regulation Best Execution,* Release No. 96496 (Dec. 15, 2022), 88 FR 5440, 5477 (Jan. 27, 2023).

[439] Structured Documents that contain numeric disclosures include Form X–17A–5 Part III, Form 17–H, Form CA–1, Form 1, Rule 19b–4(e) information (in some cases), VDNs, and CCO reports required by Rule 15fk–1(c)(2)(ii)(A) (in some cases). *See supra* sections II.A, II.D, II.E, IV.A, IV.B, V.A, V.B, V.D, and *infra* section X.C.1.b.

[440] Structured Documents that contain textual disclosures include Form X–17A–5 Part III, Form 17–H, Form CA–1, Form 1, Form 1–N (execution page only), Form X–17A–19, VDNs, and CCO reports. *See id.*

[441] *See* SIFMA 5/22/2023 Letter at 1–7, 9, 11, and 14.

[442] *See id.* at 1.

[443] *See id.* at 4.

[444] *See id.*

[445] *See infra* section X.B.1.

[446] *See* SIFMA 5/22/2023 Letter at 4.

[447] *See infra* section X.C.2.b.

[448] Specific cost ranges for initial structured data implementation costs are set forth in section X.C.2.b. See also infra sections IX.D.2, IX.D.5, IX.D.9.a, and IX.D.15 (estimating higher structured data burdens for the first year of compliance compared to subsequent years).

[449] *See* SIFMA 5/22/2023 Letter at 4.

service provider.[450] However, because Inline XBRL tagging software includes rendering and validation functions, the Commission disagrees with the commenter that firms will also need to purchase XBRL rendering and validation software. For firms that engage third-party tagging service providers, the Commission disagrees with the commenter that numerous third-party vendors are necessary for a firm to implement the structured data requirements but agrees with the commenter that firms which outsource compliance to a third-party service provider will undergo initial implementation costs associated with diligencing, negotiating with, and onboarding that service provider. The Commission has therefore revised the proposed structured data cost and burden estimates to add these initial costs for firms that outsource structured data compliance to third-party service providers.[451]

The commenter stated that structured data burdens would be especially great for firms that are not affiliates of public reporting companies, since these firms do not currently submit EDGAR filings in XBRL or XML, and that the XBRL resources the public filers have developed for purposes of their 10–K and 10–Q filings are of minimal utility for other kinds of reports, such as the CCO report, because these reports rely on different systems, personnel, divisions, processes, and timelines, and would be subject to different tagging taxonomies.[452] The Commission agrees with the commenter that some firms affiliated with public reporting companies will incur lower burdens and costs to structure filings in XBRL.[453] The Commission disagrees with the commenter that resources developed for Form 10–K and 10–Q filings are of minimal utility for other types of reports (such as the CCO report), because whether firms comply with the structured data requirements by outsourcing compliance to a third-party service provider or by licensing Inline XBRL tagging software to use internally, the types of content (numeric, narrative, Boolean, *etc.*) included within the CCO report and the other Structured Documents are the same as the types of content included within filings that are currently tagged in Inline XBRL (such as Form 10–Q and Form 10–K). Because the Structured Documents do not include novel types of content, the functionality included in existing Inline XBRL services and software available on the market will be able to accommodate the Inline XBRL tagging of disclosures in the CCO report and the other Structured Documents.

The commenter also stated that there are mechanisms to achieve the Commission's objectives that would be substantially less costly and burdensome for firms than those proposed by the Commission, such as allowing firms to submit PDFs via email or private file transfer service.[454] The Commission disagrees. To the extent firms are manually entering data, inputting values into a fillable form would not incur substantially higher costs and burdens compared to inputting the same information and submitting the form via other means such as email. Additionally, to the extent firms automatically populate PDF forms by using their own existing systems, as the commenter suggested it does, similar processes can be used to generate filings in a custom XML-based data language, which can then be submitted and validated in EDGAR. Furthermore, as discussed in further detail in the economic analysis below, the structured data requirements under the rule amendments will increase the accessibility and usability of the disclosures in the Structured Documents in ways that cannot be achieved by PDF documents. For example, Structured Documents enable more efficient retrieval, sorting, filtering, comparison, aggregation, and other analysis of the disclosures, thereby increasing transparency and insight into the operations, governance, management, financial condition, and other characteristics of the affected entities.[455]

The commenter further stated that, in the absence of XBRL taxonomies at the proposal phase, neither registrants nor other constituencies could have provided the Commission with robust feedback on the rule amendments, so the Commission should submit proposed XBRL tagging taxonomies and XML fillable web forms to notice and comment so the public can identify potential costs, benefits, and ambiguities with these proposals. The commenter stated that a key consideration in determining the cost of preparing reports in XBRL is the number of required tags, which depends on the granularity of the taxonomy (which can, in some cases, have 15,000 to 20,000 tags), but the rule amendments do not specify a taxonomy or number of tags.[456]

The Commission disagrees. XBRL taxonomies and XML schemas are not rule requirements and do not themselves impose a substantive obligation on affected filers or submitters; rather, taxonomies and schemas provide a hierarchical list of elements that affected filers or submitters will use when complying with the structured data requirements.[457] The legal obligations to structure certain affected documents are contained within the Exchange Act rules, the Exchange Act forms, and within Regulation S–T (including through cross-references to the EDGAR Filer Manual), and were all set forth in the Proposing Release.[458] The number of tags in a taxonomy or schema is driven by the nature and granularity of the legal disclosure requirements, since each tag in a taxonomy or schema is derived from a particular disclosure requirement. The extent of compliance costs arising from Inline XBRL requirements or custom XML requirements derives from the legal disclosure requirements themselves, not the data model of the taxonomy to be used for structuring those disclosures.[459]

Accordingly, we think it appropriate for these draft taxonomies and schemas to be posted after adoption of the final rule rather than at an earlier point in time.[460] However, there is an

[450] The burden and cost estimates for structured data requirements in this release include service provider and software licensing costs. *See infra* sections IX.D.2, IX.D.5, IX.D.9.a, and IX.D.15, and X.C.2.b.

[451] *See infra* sections IX.D.9.a and X.C.2.b.

[452] *See id.*

[453] *See infra* section X.C.2.b.

[454] *See* SIFMA 5/22/2023 Letter at 2. The commenter also stated that the requirement to submit fillable web forms on EDGAR in lieu of PDFs would actually undermine the rule amendments' goals by introducing inefficiencies and opportunities for human error. *See id.* The Commission's response to this comment regarding fillable web forms and human error is included above in Section V.C.2.

[455] *See infra* section X.C.1.b.

[456] *See* SIFMA 5/22/2023 Letter at 2–3, 5. The commenter made a similar comment stating that the rule amendments do not identify specific elements to be included on the VDNs. *See* SIFMA 5/22/2023 Letter at 2. Earlier in this release we addressed the need to identify the specific elements for inclusion on the VDNs, *see supra* section V.C.2., but this section's discussion of taxonomies and the public feedback process is also relevant to that comment on VDNs.

[457] *See* Commission, ''XBRL Glossary of Terms,'' available at *https://www.sec.gov/page/osd_xbrlglossary* (last visited May 27, 2024).

[458] *See* Proposing Release at 24006–24008, 24011–24015, 24022, 24043, and 24054.

[459] *See infra* section X.C.2.b (discussing the costs associated with structured data obligations under the rule amendments).

[460] Although staff will develop taxonomies specific to the required disclosures under the adopted rule, XBRL also uses and implements existing accounting and reporting standards such as U.S. GAAP. Accordingly, certain tagging elements specific to financial statements prepared in accordance with U.S. GAAP are available for

Continued

opportunity for public feedback on the XBRL taxonomies and XML schemas. In keeping with past practice, Commission staff will post draft versions of the XBRL taxonomies and XML schemas (from which fillable web forms on EDGAR are derived) associated with the rulemaking for technical feedback from the public following adoption of the rule amendments.[461] This practice allows registrants and other interested parties to provide the Commission staff with feedback on the technical design of those taxonomies and schemas in advance of the compliance date for structured data requirements.

The commenter also stated that instead of mandating that firms use specific structured data languages for particular reports, the Commission should adopt a principles-based approach that requires firms to submit reports in a machine-readable form.[462] The commenter stated that, given the pace of technological change, it is quite likely that a prescriptive requirement to use a particular structured data language will become obsolete or impractical within a short period of time.[463] According to the commenter, experience demonstrates that such obsolescence can create significant challenges for market participants as well as undue costs and confusion.[464]

The Commission disagrees with the commenter. Specifying a single structured data language for all filers or submitters to use for a particular disclosure requirement is beneficial because it will assist with efficient, interoperable analysis of those disclosures across different filers or submitters. By contrast, an open-ended data language requirement would have allowed different filers or submitters of the same disclosure to provide that disclosure in different structured data languages. This would render data users such as Commission staff and market participants unable to incorporate disclosures from filers or submitters using one data language into the same datasets and applications as disclosures of other filers or submitters using different data languages without undertaking data conversion processes that can be burdensome and imprecise. XBRL and XML are industry standards that are maintained by standard-setting bodies (XBRL International and the World Wide Web Consortium, respectively) and have been in use for decades. The Commission believes the current benefits of efficient and interoperable analysis of XBRL and XML structured data by the Commission and market participants justify the use of these standards over a principles-based approach that, although it could accommodate unknown future developments, would make it more difficult for Commission staff and market participants to compare disclosures across differing data languages.[465]

The commenter specifically questioned the Commission's characterization of benefits for narrative-based reports (*e.g.,* the CCO report).[466] The commenter stated that adding Inline XBRL requirements for those reports would not facilitate analysis or comparison, because those reports do not contain standardized, easily comparable elements. However, all narrative reports must include disclosure responsive to applicable disclosure requirements set forth in the Commission's rules and regulations (*e.g.,* the disclosure requirements set forth in the subparagraphs of Rule 15fk–1(c)(2)(i) under the Exchange Act). While there may be variation in how different filers or submitters of those reports respond to those disclosure requirements, Inline XBRL structuring will facilitate efficient assessment of such variations and will also enable efficient comparisons of a single filer or submitter's narrative disclosure over multiple time periods, allowing data users to determine how that filer's or submitter's narrative disclosure has evolved over time. For example, Commission staff will be able to efficiently retrieve all disclosures identifying material non-compliance matters in response to Exchange Act Rule 15fk–1(c)(2)(i)(D) across CCO reports and compare how different CCO report submitters identified and explained such matters. An analysis like this is useful and appropriate in the Commission's fulfillment of its mission, because the Commission can more effectively oversee firms' compliance with the mandate in section 15F of the Exchange Act to conform with business conduct standards relating to diligent supervision of the business of each registered security-based swap dealer and major security-based swap participant.[467]

The same commenter also questioned why the Commission cited sentiment analysis as a benefit of Inline XBRL requirements.[468] According to the commenter, sentiment analysis is typically used for marketing purposes, and thus it was not clear to the commenter why such analysis would be necessary or beneficial for narrative reports. However, sentiment analysis is often used for purposes beyond marketing, including in assessment of regulatory disclosures such as disclosures in Commission filings, in order to assess the usefulness of disclosures to end users in the market. Thus, sentiment analysis is relevant to our assessment of the benefit of requiring narrative reports to be structured under the rule amendments.[469]

Another commenter specifically disagreed with the Commission's view that structuring broker-dealer reports in XBRL would provide benefits that justify compliance burdens.[470] This commenter stated that, because regulators receive periodic FOCUS reports that are encoded as they have been for decades, regulators do not need encoded (*i.e.,* machine-readable) broker-dealer financial statements.[471] The Commission disagrees with the commenter's point, because the amended rules include Inline XBRL requirements for the annual broker-dealer audited reports (Form X–17A–5 Part III), and those reports include more disclosure—such as the notes to the financial statements and the exemption reports—than the periodic FOCUS reports do.[472] Because regulators will be able to analyze this additional information much more efficiently when provided in a structured, machine-readable format rather than in

review. *See* Fin. Acct. Stds. Bd., *XBRL: What Is it? Why the FASB? Who Uses It?, available at https://www.fasb.org/page/PageContent?pageId=/staticpages/what-is-xbrl.html&isstaticpage=true; see also* SEC, ''2024 XBRL Taxonomies Update,'' available at *https://www.sec.gov/newsroom/whats-new/2403-2024-xbrl-taxonomies-update* (last visited Aug. 14, 2024) (stating that U.S. GAAP Financial Reporting taxonomy and the 2024 SEC Reporting Taxonomy reflect the same taxonomy versions that the Financial Accounting Standards Board made available on its website on December 14, 2023).

[461] Currently posted draft taxonomies and XML schemas are available on the Commission's website. *See* Commission, ''DERA Taxonomies,'' *available at https://www.sec.gov/structured-data/dera-taxonomies* (last visited May 27, 2024); Commission, ''EDGAR Technical Specifications'', *available at https://www.sec.gov/edgar/filer/technical-specifications* (last visited May 27, 2024).

[462] *See* SIFMA 5/22/2023 Letter at 3.

[463] *See id.* at 6.

[464] *See id.*

[465] *See* W3 Schools, Introduction to XML, *available at https://www.w3schools.com/XML/xml_whatis.asp* (last accessed Apr. 18, 2024); XBRL International, XBRL Essentials, *available at https://specifications.xbrl.org/xbrl-essentials.html* (last accessed Apr. 18, 2024).

[466] *See* SIFMA 5/22/2023 Letter at 7.

[467] *See* Section 15F(h)(1)(B) of the Exchange Act.

[468] *See id.*

[469] *See infra* section X.C.1.b (discussing the use of sentiment analysis to assess disclosures in Commission filings).

[470] *See* Integrated Solutions Letter at 2–3.

[471] *See id.* at 4.

[472] *See supra* section IV.A. *See also infra* section X.C.1.b for additional discussion of the anticipated benefits arising from the structured data requirements.

paper or in PDF format, regulators—and ultimately the markets—will derive a significant benefit from the Inline XBRL requirement for Form X–17A–5 Part III.

The same commenter also stated that customers of broker-dealers do not read Form X–17A–5 Part III, and investors in broker-dealers do not need Form X–17A–5 Part III.[473] The Commission disagrees with this statement—there are multiple examples of public market participants using Form X–17A–5 Part III information to the benefit of broker-dealer investors and customers.[474]

Finally, the commenter suggested that, should the Commission nonetheless include a structuring requirement for Form X–17A–5 Part III under the rule amendments, the filing period for annual financial statement filers be extended by fifteen days to allow for XBRL encoding to be accomplished. In light of the estimated hourly burdens for broker-dealers subject to Inline XBRL tagging requirements, the Commission believes broker-dealers will be able to meet the existing filing period for Form X–17A–5 Part III.[475] Nonetheless, if broker-dealers encounter unanticipated technical difficulties, they can extend the deadline by up to six days with a temporary hardship exception under Rule 232.201 and if they experience undue burdens or expenses, can request a continuing hardship exemption under Rule 232.202.[476]

The same commenter stated that the proposal's lack of clarity around the structured data requirements and XBRL taxonomies created difficulty in determining compliance costs. The Commission disagrees that the proposal, which specified exactly which portions of each affected document would be structured in which data language, lacked clarity around the structured data requirements.[477]

Notwithstanding the above, the Commission agrees with the commenter that making draft versions of appropriate XBRL taxonomies available for technical feedback from the public is a beneficial step in ensuring the taxonomies will be as useful as possible.[478] In keeping with past practice, a draft version of each taxonomy and schema necessary to implement the structuring requirements for the Structured Documents will be made available for public feedback, and final versions of each taxonomy and schema (which will take into account any feedback received) will be compatible with an updated version of EDGAR before each related structuring compliance date.[479]

The Commission is requiring Inline XBRL for certain affected documents and portions or portions thereof, rather than requiring Inline XBRL for all affected documents, because Inline XBRL is more suitable for certain types of content than other types. Specifically, Inline XBRL is most suitable for financial statement disclosures (including footnotes and schedules thereto), for narrative disclosures (other than brief descriptions), and for disclosures of numeric details nested within narrative disclosures. From a technical standpoint, Inline XBRL was designed to accommodate financial statement information, including the particular metadata (*e.g.,* the relevant fiscal period, whether the line item is located on the balance sheet, whether the line item is a credit or debit) that must be linked to each data point within the financial statements to fully convey its semantic meaning to a machine reader. Inline XBRL is also well suited from a technical standpoint of accommodating lengthier narrative disclosures, including those with numeric values nested within narrative disclosures, while providing presentation capabilities that preserve human-readability and maintain machine-readability. For other types of disclosures, requiring custom XML data languages would be more suitable due to the smaller file sizes of custom XML documents and the availability of fillable web forms on EDGAR that permit filers or submitters to input their disclosures into the form rather than structure the disclosures in custom XML.[480]

One commenter disagreed with the Commission's use of a mix of Inline XBRL and custom XML requirements under the rule amendments, and instead stated that the Commission should use XBRL requirements rather than custom XML requirements because the former greater provides significantly greater benefit than the latter.[481] According to the commenter, a fillable web form that automatically generates XBRL files can be created just as easily as one that creates a custom XML file.[482] While the Commission agrees that this is technically feasible, the EDGAR system is (with limited exception) currently built to provide fillable web forms for custom XML filings, not for XBRL filings, and changing the system would incur costs and burdens that would not justify the related benefit.

For those affected documents where filers are required to attach copies of existing materials (such as copies of constitutions, bylaws, written agreements, applications, and other documents) rather than disclosures provided pursuant to the Commission's disclosure requirements, the Commission is requiring filers to upload those copies as unstructured PDF documents. Requiring filers to retroactively structure these existing documents, which were prepared for purposes outside of fulfilling the Commission's disclosure requirements, would impose costly compliance burdens on filers without commensurate informational benefit associated with more efficient disclosure use. Thus, structured data requirements are not warranted for these copies of existing documents.

Because the very limited number of Form 1–N and Form 15A filers and filings mitigates the benefit derived

[473] *See* Integrated Solutions Letter at 4.

[474] *See, e.g.,* Alphacution, ''Goldman, Morgan, Deutsche: Comparing Bank-Owned Broker-Dealers in Equities'' (Aug. 30, 2019) (retrieved from Factiva database) (using Form X–17A–5 Part III disclosure to assess the condition of several large bank-owned broker-dealer subsidiaries); Arun Gupta, ''The Internal Capital Markets of Global Dealer Banks,'' Finance and Economics Discussion Series 2021–036, Washington: Board of Governors of the Federal Reserve System (Apr. 25, 2021), *https://www.federalreserve.gov/econres/feds/the-internal-capital-markets-of-global-dealer-banks.htm* (Federal Reserve Board staff research paper using balance sheet data from Form X–17A–5 Part III to examine the internal capital markets that played a central role in the financing of dealer banks during the 2008 Global Financial Crisis).

[475] In the Economic Analysis and Paperwork Reduction Act sections of this release, the Commission describes and quantifies the specific costs and burdens that broker-dealers will incur in complying with Inline XBRL requirements for Form X–17A–5 Part III under the amended rules. On average, respondents are estimated to incur 7 burden hours for the first response to be tagged in Inline XBRL, and incur 4.5 burden hours to tag subsequent responses in Inline XBRL. *See infra* sections IX.D.9.a and X.C.2.b.

[476] 17 CFR 232.201(c), 232.202. A continuing hardship exception is not deemed granted until the applicant is notified by the Commission or the staff. *Id.*

[477] *See* Proposing Release at 23964–66. Furthermore, XBRL taxonomies themselves do not impose substantive obligations on filers; instead, an XBRL taxonomy is a technical glossary of tags that can be used when tagging an Inline XBRL document, including those prepared in accordance with Commission regulations. Section X.C.2.b below discusses the compliance costs with respect to the structured data requirements.

[478] *See* SIFMA 5/22/2023 Letter at 14.

[479] *See* Securities and Exchange Commission, Taxonomies, *available at https://www.sec.gov/structureddata/dera-taxonomies* (last accessed Apr. 19, 2024) (including a section with draft taxonomies); Securities and Exchange Commission, EDGAR Technical Specifications, *available at https://www.sec.gov/edgar/filer/technical-specifications* (last accessed Apr. 19, 2024) (including a section with draft XML technical specifications).

[480] *See also infra* section X.E.4 (discussing other structured data languages that would result in smaller file sizes than Inline XBRL).

[481] *See* XBRL Letter at 2.

[482] *See id.* at 2.

from machine-readability of the disclosures contained therein, structured data are not required for Forms 1–N and 15A (other than the execution pages of those Forms). Similarly, structured data for ANE Exception Notices are not required, because the limited number of data points on such notices lessens the utility of any functionality enabled by structured data (such as efficient retrieval of individual data points from structured documents).

B. Amendments to Rule 24b–2

Rule 24b–2 provides procedures that are the exclusive means for requesting confidential treatment of information required to be filed under the Exchange Act and that allow the Commission to decide whether information will be disseminated to the public upon the filing of the information.[483] Paragraph (b) of Rule 24b–2 provides that, except as provided in paragraphs (g) and (h) of the Rule, a person seeking confidential treatment shall omit from materials filed with the Commission the confidential portion.[484] Paragraphs (g) and (h) state that certain entities, as specified in those paragraphs, shall not omit the confidential portion from the materials such entities file with the Commission. The Commission proposed to add a new paragraph (j) to Rule 24b–2 to render it consistent with Rules 17a–5, 17a–12, and 18a–7, which require firms to file the portion of the annual audit subject to a confidential treatment request to be filed with the public portion. The new paragraph is subdivided into two parts. The first sub-paragraph provides that a broker-dealer shall not omit the confidential portion from the materials filed in electronic format pursuant to paragraphs (d) and (k) of Rule 17a–5, Rule 17a–12, or Rule 17h–2T. The second sub-paragraph states that an SBS Entity shall not omit the confidential portion of materials filed in electronic format pursuant to Rule 18a–7. The Commission received no comment on this proposal and for the reason discussed above, is adopting it as proposed.

The Commission also proposed to add a new paragraph (k) to Rule 24b–2. The new paragraph provides that an entity shall not omit the confidential portion from the material filed in electronic format on Form CA–1 pursuant to Rule 17ab2–1, but rather may request confidential treatment of information provided on Form CA–1 by completing section X of Form CA–1. The Commission received no comment on this proposal and is adopting it as proposed because requesting confidential treatment is an appropriate method of providing complete information to regulators without disclosing confidential information to the public.

VIII. Compliance Dates

The Commission received comments regarding the compliance dates of the final rules and rule amendments.[485] One commenter stated that the Commission should only require compliance once the Commission has implemented and tested the necessary infrastructure for electronic submission and should stage any requirements.[486] The commenter also stated that the Commission should not require firms to comply until no less than two years after the Commission makes the necessary updates to EDGAR and finalizes any taxonomies.[487]

The Commission regularly considers the implementation and effectiveness of regulatory filing requirements. As discussed above, the structured data requirements will improve the accessibility and usability of disclosures by market participants. Consistent with its mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation, the Commission plans to monitor the implementation of these requirements. Specifically, with regard to the amendments adopted herein, by March 31, 2028, Commission staff will complete a review of the implementation of structured data requirements by those firms required to apply machine-readable Inline XBRL data ''tags'' to their annual reports and annual supplemental reports due on or after June 30, 2026, and the Commission use of the data. Finally, the Commission is adopting phased compliance dates for the rule amendments. This staging is intended to provide sufficient time for testing, consistent with the commenter's concern. In addition, the phased compliance dates will give regulated entities time to incorporate changes to their policies, procedures, systems, and practices made for individual new requirements.

All firms filing annual reports or supplemental reports under Rules 17a–5, 18a–7, and 17a–12, or quarterly and annual risk assessment reports on Form 17–H pursuant to Rule 17h–2T, on or after June 30, 2025, are required to file such reports on EDGAR (in a PDF format). The Commission has prepared EDGAR to receive broker-dealer annual reports electronically, and Commission staff issued a no-action letter not objecting to broker-dealers voluntarily filing their annual reports electronically on EDGAR in accordance with instructions posted on the Commission's website instead of filing them in paper form. Approximately half of broker-dealers have filed the reports electronically consistent with the staff no-action letter.[488] In practical terms, with respect to annual reports or supplemental reports filed on or after December June 30, 2025, the filing method outlined in the staff no-action letter will be used by all firms filing such reports under Rules 17a–5, 18a–7, and 17a–12.

With respect to the requirement that these annual reports and supplemental reports under Rules 17a–5, 18a–7, and 17a–12 be provided in a structured, machine-readable data language, the Commission is adopting phased compliance dates. First, firms with a minimum fixed dollar net capital requirement greater than or equal to $250,000 as of December 31, 2024, will be required to apply machine-readable Inline XBRL data ''tags'' to their annual reports and annual supplemental reports due on or after June 30, 2026. Firms with a minimum fixed dollar net capital requirement less than $250,000 as of December 31, 2024 will be required to apply machine-readable Inline XBRL data ''tags'' to their annual reports and annual supplemental reports due on or after June 30, 2028. Rule 17h–2T's requirement that the quarterly and annual risk assessment reports be filed with the Commission using Inline XBRL will apply to filings due on or after March 31, 2026. These compliance timeframes will provide registrants with adequate time to prepare, consistent with the commenter's concern.

The phased-in approach will help ensure that market participants receive machine readable annual reports and supplemental reports from the largest firms as soon as practicable, while

[483] 17 CFR 240.24b–2(a). However, with regard to Rule 15fi–3(c) security-based swap valuation dispute notices, *see supra* note 334 and accompanying text.

[484] 17 CFR 240.24b–2(b).

[485] With respect to the compliance date, commenters requested that the Commission consider interactions between the proposed rule and other recent Commission rules. *See infra* note 862. In determining compliance dates, the Commission considers the benefits of the rules as well as the costs of delayed compliance dates, and potential overlapping compliance dates. For the reasons discussed throughout the release, to the extent that there are costs from overlapping compliance dates, the benefits of the rule justify the costs. See infra sections X.B.1. and X.C.2.c in the Economic Analysis for a discussion of the interaction of the final rule with certain other Commission rules.

[486] SIFMA 5/22/2023 Letter at 3.

[487] SIFMA 5/22/2023 Letter at 14.

[488] *See* Proposing Release at 23947; *see also id.* at 23947 n.179.

giving other, smaller filers, that may need to incur proportionately higher costs, additional time to develop related expertise, as well as the opportunity to benefit from the experience of larger filers with Inline XBRL. The phase-in will also provide software vendors and service providers with additional time to develop related expertise and scale up their businesses.[489]

The Commission is amending Rule 17a–19 and Form X–17A–19 to require that Form X–17A–19 filings be made on EDGAR, in a custom XML-based data language. This requirement applies to Form X–17A–19 filings due on or after December 31, 2026. As of February 15, 2024, there are a total of 25 national securities exchanges and associations, none of which files Form X–17A–19 electronically on EDGAR. This December 31, 2026 compliance date should provide national securities exchanges and associations time to prepare to comply with the electronic filing requirement.

The compliance date for the amendments to FOCUS Report Parts II, IIA, and IIC is March 1, 2026, to allow broker-dealers and SBS Entities opportunity to become familiar with the changes and make any necessary updates to their policies, procedures, systems, and practices. In addition, it allows FINRA to develop and test these updates to its eFOCUS system.

OTC derivatives dealers are required to file FOCUS Report Part II due on or after June 30, 2025, electronically on the SEC eFOCUS system. SBS Entities that are not dually registered as broker-dealers are already filing FOCUS Report Part II on the SEC eFOCUS system. Although OTC derivatives dealers will need to obtain access to the SEC eFOCUS system, OTC derivatives dealers are affiliated with broker-dealers that are already familiar with the FINRA eFOCUS system used by broker-dealers to file their FOCUS Reports. Given the close similarity between the SEC eFOCUS system and the FINRA eFOCUS system, the Commission does not expect OTC derivatives dealers would need additional time to prepare for making these submissions in the SEC eFOCUS system.

SROs will be required to begin posting the information required under Rule 19b–4(e) on their public internet websites on September 1, 2025, but may begin posting that information earlier once the XML schema and the associated PDF renderer are published on the Commission's website. This early compliance approach is relevant to Rule 19b–4(e) information under the rule amendments because such information is required to be posted on SRO websites, rather than through EDGAR, so SROs will not need to wait to comply with the amended Rule 19b–4(e) requirement. If an SRO begins posting information required under Rule 19b–4(e) on its website earlier than September 1, 2025, it generally should continue to do so for all new derivative securities products under Rule 19b–4(e) and generally should cease filing any Forms 19b–4(e) with the Commission. SROs will be required to file other forms electronically. Accordingly, the compliance date for the amendments related to Form 1 is March 2, 2026, the compliance date for the amendments related to Form CA–1 is April 30, 2026, and the compliance date for the amendments related to Forms 1–N and 15A is July 1, 2026. Each of these compliance dates will allow filers the opportunity to become familiar with the changes to the forms and make any necessary updates to their policies, procedures, systems, and practices.

The compliance date for the amendments to Rule 15fi–3(c) with respect to the submission of VDNs is January 1, 2026. The deferred compliance date is intended to enable SBS Entities to incorporate changes to their policies, procedures, systems, and practices prior to the applicability of the new requirements to file VDNs on EDGAR and in structured data. Between the effective date of the amendments and January 1, 2026, SBS Entities generally should continue to submit VDNs using the two methods made available to them prior to the effective date of the amended rule: (1) electronic submission in PDF format via EDGAR; or (2) submission in PDF format to a dedicated Commission email address.

The compliance date for the amendments to Rule 3a71–3(d)(1)(vi) is January 1, 2026. Accordingly, an entity seeking to file an ANE Exception Notice on or after January 1, 2026, will be required to do so via EDGAR. Similarly, an entity required to withdraw an ANE Exception Notice under the amended rule will not be required to do so until January 1, 2026. Between the effective date of the amended rule and January 1, 2026, entities seeking to file an ANE Exception Notice should submit it to the electronic mailbox described on the Commission's website at *www.sec.gov* at the ''ANE Exception Notices'' section.[490] The deferred compliance date is intended to enable entities to incorporate changes to their policies, procedures, systems, and practices prior to the applicability of the new requirements. SBS Entities will be required to submit CCO reports as required by Rule 15fk–1(c) through EDGAR in Inline XBRL format beginning on January 1, 2026. The deferred compliance date is intended to enable SBS Entities to incorporate changes to their policies, procedures, systems, and practices prior to the applicability of the new requirements to submit CCO reports on EDGAR and in Inline XBRL format. Between the effective date of the amendments and January 1, 2026, SBS Entities should continue to submit CCO reports using the methods currently available to them: (1) electronic submission on EDGAR in PDF format; (2) submission to a dedicated Commission email address; or (3) mail.

The compliance date for all other amended rules will be the effective date of this release. It is feasible for the regulated entities subject to these amended rules to be able to comply by the required compliance date without imposing unreasonable cost burdens.

The following chart sets forth the compliance dates for the rule amendments:

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[489] *See infra* section X.C.2.b.

[490] *See www.sec.gov/tm/ane-exception-notices.*

Rule	Compliance Date
• 17 CFR 232.101's requirements relating to 17 CFR 240.17a-5, 17 CFR 240.17a-12, 17 CFR 240.17h-2T, and 17 CFR 240.18a-7 • 17 CFR 240.17a-5(d)(6) and (k)'s requirements to file electronically • 17 CFR 240.17a-12(a)(2) • 17 CFR 240.17a-12(b)(6), (k), (l)(1), and (m)(1)'s requirements to file electronically • 17 CFR 240.17h-2T's requirement to file electronically • 17 CFR 240.18a-7(c)(6)'s requirement to file electronically	New requirements apply to filings due on or after June 30, 2025
• 17 CFR 240.15fk-1(c)	New requirements apply to submissions due on or after Jan. 1, 2026
• Rule 19b-4(e)	New requirements apply to filings due on or after September 1, 2025
• 17 CFR 232.101's requirements relating to § 249.1 (Form 1) • 17 CFR 232.405's requirements relating to § 249.1 (Form 1) • 17 CFR 240.6a-1, 6a-2, and 6a-3	New requirements apply to filings due on or after March 2, 2026
• 17 CFR 232.101's requirements relating to § 249.200 (Form CA-1) • 17 CFR 232.405's requirements relating to § 249.200 (Form CA-1) • 17 CFR 240.17ab2-1's requirements relating to § 249.200 (Form CA-1)	New requirements apply to filings due on or after April 30, 2026
• 17 CFR 232.101's requirements relating to § 249.10 (Form 1-N) • 17 CFR 232.101's requirements relating to § 249.801 (Form 15A) • 17 CFR 240.6a-4 • 17 CFR 240.15aa-1 and 15aa-2	New requirements apply to filings due on or after July 1, 2026
• 17 CFR 232.405's requirements relating to 17 CFR 240.17a-5, 17a-12, and 18a-7 • 17 CFR 240.17a-5(d)(6) and (k)'s requirements to file as an Interactive Data File • 17 CFR 240.17a-12(b)(6), (k), (l)(1), and (m)(1)'s requirements to file as an Interactive Data File • 17 CFR 240.18a-7(c)(6)'s requirement to file as an Interactive Data File	For firms with a minimum fixed dollar net capital requirement greater than or equal to $250,000 as of Dec. 31, 2024: New requirements apply to filings due on or after June 30, 2026 For all other firms: New requirements apply to filings due on or after June 30, 2028
• 17 CFR 232.405's requirements relating to 17 CFR 240.17h-2T • 17 CFR 240.17h-2T's requirement to file as an Interactive Data File	New requirements apply to filings due on or after Mar. 31, 2026

• 17 CFR 232.101's requirements relating to 17 CFR 240.17a-19 • 17 CFR 240.17a-19	New requirements apply to filings due on or after Dec. 31, 2026
• Form X-17A-5 Part II • Form X-17A-5 Part IIC • Form X-17A-5 Part IIA	New requirements apply to filings due on or after Mar. 1, 2026
• 17 CFR 232's amendments relating to 17 CFR 240.3a71-3(d)(1)(vi) • 17 CFR 240.3a71-3(d)(1)(vi) requirements for filing of notices and withdrawals	New requirements apply beginning January 1, 2026
• 17 CFR 232's amendments relating to 17 CFR 240.15fi-3(c) • 17 CFR 240.15fi-3(c) requirements for submission of notices of valuation disputes	New requirements apply to notices submitted on or after January 1, 2026
• All other rule amendments	March 24, 2025

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IX. Paperwork Reduction Act

Certain provisions of the rules and rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[491] The titles of these requirements are:

- Form ID (OMB Control No. 3235–0328);[492]
- Rules 6a–1 and 6a–2, Form 1 (OMB Control No. 3235–0017);[493]
- Rule 6a–3 (OMB Control No. 3235–0021);[494]
- Rule 6a–4, Form 1–N (OMB Control No. 3235–0554);[495]
- Rules 15aa–1 and 15aa–2, Form 15A (OMB Control No. 3235–0030);[496]
- Rule 17ab2–1, Form CA–1 (OMB Control No. 3235–0195);[497]
- Rule 19b–4(e), Form 19b–4(e) (OMB Control No. 3235–0504);[498]
- Rule 19b–4, Form 19b–4 (OMB Control No. 3235–0045);[499]
- Rule 17a–22 (OMB Control No. 3235–0196);[500]
- Rule 3a71–3(d) (OMB Control No. 3235–0771);[501]
- Rules 15fi–3 to 15Fi–5 (OMB Control No. 3235–0777);[502]
- Rule 15fk–1(c)(2)(ii)(A) (OMB Control No. 3235–0732);[503]
- Rule 17a–5 (OMB Control No. 3235–0123);[504]
- Rule 17a–12 (OMB Control No. 3235–0498);[505]
- Rule 17a–19 and Form X–17A–19 (OMB Control No. 3235–0133);[506]
- Rule 17h–2T (OMB Control No. 3235–0410);[507] and
- Rule 18a–7 (OMB Control No. 3235–0749).[508]

The Commission is submitting these requirements to the Office of Management and Budget (''OMB'') for review and approval in accordance with the PRA and its implementing regulations.[509] Responses to the new collections of information are mandatory, or mandatory except to the extent an exception is available. 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.[510]

A. Summary of Collection of Information

1. Form ID

Form ID must be completed and filed with the Commission by all individuals, companies, and other organizations who seek access to file electronically on EDGAR.[511] Accordingly, a filer that does not already have access to EDGAR must submit a Form ID, along with the notarized signature of an authorized individual, to obtain an EDGAR identification number and access codes to file on EDGAR.

2. Rules 6a–1, 6a–2, 6a–3, and Form 1

Rule 6a–1 under the Exchange Act generally requires that an applicant seeking to register as a national securities exchange, or seeking an exemption from such registration based on limited volume, file an application on Form 1 and correct any inaccuracy therein upon discovery of such

[491] 44 U.S.C. 3501 *et seq.*

[492] *See* 17 CFR 249.446.

[493] *See* 17 CFR 249.1; 17 CFR 240.6a–1; 17 CFR 240.6a–2.

[494] *See* 17 CFR 240.6a–3.

[495] *See* 17 CFR 249.10, 17 CFR 240.6a–4; 17 CFR 249.10.

[496] *See* 17 CFR 240.15aa–1; 17 CFR 240.15aa–2. Form 15A, as adopted, would apply only to one SRO out of a total of 44 SROs. Although this form is expected to impact fewer than 10 entities, the Commission is including this PRA analysis. The Commission is revising and reinstating collections of information that were previously approved under Control Nos. 3235–0030 and 3235–0044. Because the Commission is consolidating the collections in amended and re-designated forms, all collections would be under Control No. 3235–0030 and Control Number 3235–0044 would remain inactive. In addition, because of the length of time since these control numbers were last active, the Commission is providing completely new burden estimates.

[497] *See* 17 CFR 240.17ab2–1; 17 CFR 249b.200.

[498] *See* 17 CFR 240.19b–4(e); 17 CFR 249.820.

[499] *See* 17 CFR 249.819; 17 CFR 240.19b–4.

[500] *See* 17 CFR 240.17a–22.

[501] *See* 17 CFR 240.3a71–3(d).

[502] *See* 17 CFR 240.15fi–3, 17 CFR 240.15Fi–4 (''Rule 15Fi–4''), and 17 CFR 240.15Fi–5 (''Rule 15Fi–5''). The Commission is only modifying Rule 15fi–3, which relates to the requirement that SBS Entities reconcile outstanding security-based swaps with applicable counterparties on a periodic basis. Rule 15fi–3 is included in the same collection of information as Rule 15Fi–4, which requires SBS Entities to engage in certain forms of portfolio compression exercises with their counterparties, as appropriate, and Rule 15Fi–5, which requires SBS Entities to execute written security-based swap trading relationship documentation with its counterparties, and to periodically audit the policies and procedures governing such documentation. The Commission is not changing Rules 15Fi–4 and 15Fi–5 pursuant to this rulemaking. Accordingly, those two rules are not included in the sections that follow.

[503] *See* 17 CFR 240.15fk–1(c)(2)(ii)(A).

[504] *See* 17 CFR 240.17a–5.

[505] *See* 17 CFR 240.17a–12.

[506] *See* 17 CFR 240.17a–19; 17 CFR 249.635.

[507] *See* 17 CFR 240.17h–2T.

[508] *See* 17 CFR 240.18a–7.

[509] 44 U.S.C. 3507; 5 CFR 1320.11.

[510] 5 CFR 1320.11(l).

[511] 17 CFR 249.446.

inaccuracy.[512] Form 1 contains an execution page as well as 14 exhibits that must be filed by the applicant.[513] Rule 6a–2 requires a registered national securities exchange or an exempt exchange to: (1) amend its Form 1 if there are any changes to the information provided in the initial Form 1; and (2) submit periodic updates of certain information provided in the initial Form 1, whether such information has changed or not.[514] Rule 6a–3 requires a national securities exchange or an exempt exchange to file certain supplemental material with the Commission.[515] Specifically, Rule 6a–3(a)(1) requires an exchange to file with the Commission any material issued or made generally available to members of, or participants or subscribers to, the exchange within 10 days after issuing or making such material available to such members, participants or subscribers.[516] Rule 6a–3(a)(2) provides that, if information required by Rule 6a–3(a)(1) is available continuously on a website controlled by the exchange, in lieu of filing such information, the exchange may provide on Form 1 the URL(s) of the location(s) on the website where the information can be found, and certify that the information is accurate as of its date and is free and accessible (without any encumbrances or restrictions) by the general public.[517] Rule 6a–3(b) requires an exchange to file, within 15 days after the end of each calendar month, a report concerning the securities sold on the exchange during the calendar month.[518]

The Commission is amending Rules 6a–1, 6a–2, and 6a–3 under the Exchange Act, as well as Form 1 and the instructions to Form 1, to make certain changes and to require the electronic filing of all filings required by Rules 6a–1, 6a–2, and 6a–3.

3. Rule 6a–4 and Form 1–N

Rule 6a–4 [519] sets forth the notice registration procedures for Security Futures Product Exchanges and permits futures exchanges to submit a notice registration on Form 1–N.[520] Form 1–N requires information regarding how the futures exchange operates, its rules and procedures, corporate governance, its criteria for membership, its subsidiaries and affiliates, and the security futures products it intends to trade. Rule 6a–4 also requires entities that have submitted an initial Form 1–N to file: (1) amendments to Form 1–N in the event any information provided in the initial Form 1–N is be rendered inaccurate or incomplete; (2) periodic updates of certain information provided in the initial Form 1–N; (3) certain information that is provided to the Security Futures Product Exchange's members; and (4) a monthly report summarizing the Security Futures Product Exchange's trading of security futures products.

The Commission is amending Rule 6a–4 under the Exchange Act, Form 1–N and the instructions to Form 1–N, as well as making clarifying changes to Rule 202.3(b)(3) to the Commission's Informal and Other Procedures, to make certain changes and to require the electronic filing of all submissions required by Rule 6a–4.

4. Rules 15aa–1 and 15aa–2; Form 15A

Under Exchange Act Rule 15Aa–1, an applicant for registration as a national securities association must file a registration statement with the Commission on Form X–15AA–1.[521] Exchange Act Rule 15Aj–1(a) requires every association applying for registration or registered as a national securities association to file with the Commission an amendment to its registration statement or any amendment or supplement thereto promptly after discovering any inaccuracy therein. Under Exchange Act Rule 15Aj–1(b), every association applying for registration or registered as a national securities association must file with the Commission a supplement to its registration statement or any amendment or supplement thereto promptly after discovering any inaccuracy or any change which renders no longer accurate any information contained or incorporated therein.[522] Under Exchange Act Rule 15Aj–1(c), every association applying for registration or registered as a national securities association must file annual and triennial amendments to its registration statement with the Commission.[523]

The Commission is amending Rule 15aa–1 and redesignating it as Rule 15aa–1,[524] redesignating Rule 15Aj–1[525] as Rule 15aa–2, redesignating Form X–15AA–1 as Form 15A, amending the instructions to Form 15A, and repealing Forms X–15AJ–1 and X–15AJ–2 in connection with the Commission's requirement that applicants and national securities associations electronically file on a duly executed Form 15A the information currently filed on Forms X–15AA–1, X–15AJ–1, and X–15AJ–2. The Commission is also revising Rule 15aa–1 to require electronic filing and an electronic signature.

The Commission is redesignating Form X–15AA–1 as Form 15A and incorporating in Form 15A information related to amendments and supplements to the registration statement currently filed on Form X–15AJ–1 and information related to the annual consolidated supplement to the registration statement currently filed on Form X–15AJ–2. New Form 15A would solicit information through prompts on the form that would better organize the information that is currently collected through Forms X–15AA–1, X–15AJ–1, and X–15AJ–2.

New Form 15A contains eleven sections. Preceding section I of new Form 15A, the new form contains prompts that require the association to note the basis for submitting Form 15A. The prompts indicate whether the submission is an initial application filed pursuant to Rule 15aa–1 or an amendment or supplement. Section I is titled ''Organization,'' and it solicits information about the association itself and requires the association to attach Exhibits A through D. Sections II through IX of new Form 15A solicit information about specific association rules and other information.

Section X requires the association to provide the contact information for its contact employee, and section XI provides the consent to service and attestation.

5. Rule 17ab2–1 and Form CA–1

Rule 17ab2–1(a) states that an application for registration or for exemption from registration as a

[512] *See* 17 CFR 240.6a–1.

[513] 17 CFR 249.1.

[514] *See* 17 CFR 240.6a–2.

[515] *See* 17 CFR 240.6a–3.

[516] 17 CFR 240.6a–3(a)(1).

[517] 17 CFR 240.6a–3(a)(2).

[518] 17 CFR 240.6a–3(b).

[519] 17 CFR 240.6a–4.

[520] 17 CFR 249.10.

[521] *See* Exchange Act Rule 15Aa–1, 17 CFR 240.15Aa–1 and 17 CFR 249.801. Currently, FINRA is the only national securities association registered with the Commission. The NFA, as specified in Section 15A(k) of the Exchange Act, is also registered as a national securities association, but only for the limited purpose of regulating the activities of NFA members that are registered as brokers or dealers in security futures products under section 15(b)(11) of the Exchange Act. There are no burden estimates currently approved by OMB for Exchange Act Rule 15Aa–1. *See supra* note 501.

[522] *See* Exchange Act Rule 15Aj–1(a) and (b), 17 CFR 240.15Aj–1(a) and (b). These filings are currently submitted on Exchange Act Form X–15AJ–1, 17 CFR 249.802. *See* 17 CFR 240.15Aj–1(d).

[523] *See* Exchange Act Rule 15Aj–1(c), 17 CFR 240.15Aj–1(c). These filings are currently submitted on Exchange Act Form X–15AJ–2, 17 CFR 249.803. *See* 17 CFR 240.15Aj–1(d). Rule 15Aj–1(c)(1)(ii) also requires the filing of complete sets of the constitution, bylaws, rules, and related documents of the association, once every three years.

[524] 17 CFR 240.15Aa–1.

[525] 17 CFR 240.15Aj–1.

clearing agency or an amendment to any such application shall be filed with the Commission on Form CA–1, in accordance with the instructions thereto.[526] Form CA–1 includes an execution page and 19 exhibits. Rule 17ab2–1(e) requires an applicant, a registered clearing agency, or an exempt clearing agency to file an amendment to correct any information reported in Items 1–3 of Form CA–1 if such information is, or becomes, inaccurate, misleading or incomplete for any reason.[527] The instructions to Form CA–1 require an applicant clearing agency to file four completed copies of Form CA–1 with the Commission. In addition, if an item is amended, the instructions to Form CA–1 require a registered clearing agency or an exempt clearing agency to repeat all unamended items as they last appeared on the page on which the amended item appears and to file four copies of the new page with the Commission.

The Commission is revising certain aspects of Rule 17ab2–1, Form CA–1, and the instructions to Form CA–1 to make certain changes and to require electronic filing of applications on Form CA–1 and subsequent amendments thereto submitted by applicants, registered clearing agencies, and exempt clearing agencies.

6. Rule 19b–4(e) and Form 19b–4(e)

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change if the Commission has approved, pursuant to section 19(b) of the Exchange Act,[528] the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program in place for such product class. Under Rule 19b–4(e)(2)(ii), SROs are required to submit Form 19b–4(e) [529] to the Commission within five business days after commencement of trading a new derivative securities product.[530] In addition, Rule 19b–4(e)(2)(i) requires an SRO to maintain, on–site, a copy of Form 19b–4(e) for a prescribed period of time.[531]

The Commission is amending Rule 19b–4(e) [532] to rescind Form 19b–4(e) and instead require the information currently contained in Form 19b–4(e) to be publicly posted on the listing SRO's internet website.

7. Rule 19b–4(j) and Form 19b–4

Section 19(b) of the Exchange Act, as amended, requires each SRO to file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule, or any proposed change in, addition to, or deletion from the rules of such SRO (collectively, a ''proposed rule change'') accompanied by a concise general statement of the basis and purpose of such proposed rule change.[533] Rule 19b–4 requires an SRO to submit each proposed rule change on Form 19b–4.[534] Form 19b–4 currently requires a description of the terms of a proposed rule change, the proposed rule change's impact on various market segments, and the relationship between the proposed rule change and the SRO's existing rules.[535] Form 19b–4 also requires an accurate statement of the authority and statutory basis for, and purpose of, the proposed rule change, the proposal's impact on competition, and a summary of any written comments received by the SRO.[536] An SRO is required to submit Form 19b–4 to the Commission electronically, post a copy of the proposed rule change on its public website within two business days of its filing, and post and maintain a current and complete set of its rules on its website.[537]

Rule 19b–4(j) requires that the signatory to an electronically submitted rule filing manually sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed form within the electronic document, execute that document before or at the time the rule filing is electronically submitted, and retain that document for its records in accordance with Rule 17a–1.[538] Form 19b–4 and the instructions to Form 19b–4 require that a duly authorized officer of the SRO manually sign one copy of the completed Form 19b–4 and that the manually signed signature page be maintained pursuant to section 17 of the Exchange Act.[539] The Commission is removing these manual signature requirements from Rule 19b–4(j), Form 19b–4, and the instructions to Form 19b–4.

8. Rule 17a–22

Rule 17a–22 previously required a registered clearing agency to file with the Commission three paper copies of any material (including, for example, manuals, notices, circulars, bulletins, lists, or periodicals) issued, or made generally available, to its participants or other entities with whom it has a significant relationship, such as pledgees, transfer agents, or self–regulatory organizations, within 10 days after issuing, or making generally available, such material.[540] Under pre–existing Rule 17a–22, when the Commission is not a registered clearing agency's ARA, the clearing agency must at the same time file one paper copy of the material with its ARA.[541]

The amendments to Rule 17a–22 do not change the scope of supplemental materials that are currently subject to the rule. However, the amendments replace the requirement to file multiple copies of supplemental materials with the Commission and, where applicable, the ARA in paper form with a requirement to prominently post such materials on a registered clearing agency's internet website.[542] In addition, the amendments reduce the timeframe for registered clearing agencies to comply with the rule from 10 days to 2 business days. As discussed above, the two business day timeframe is consistent with a registered clearing agency's obligation under Rule 19b–4(m) to update its website to post any rule changes filed pursuant to section 19(b) of the Exchange Act.[543] Because the supplemental materials that are subject to Rule 17a–22 will have already been prepared for distribution to a registered clearing agency's participants or other entities with whom it has a significant relationship, those documents should be readily available for the clearing agency to post on its website within the two business day timeframe.[544]

9. Rules 17a–5, 18a–7, and 17a–12

The Commission is amending Rules 17a–5, 18a–7, and 17a–12 to require

[526] 17 CFR 240.17ab2–1(a).

[527] 17 CFR 240.17ab2–1(e).

[528] 15 U.S.C. 78s(b).

[529] *See* 17 CFR 249.820.

[530] *See* 17 CFR 240.19b–4(e)(2)(ii).

[531] *See* 17 CFR 240.19b–4(e)(2)(i).

[532] 17 CFR 240.19b–4(e).

[533] 15 U.S.C. 78s(b).

[534] 17 CFR 240.19b–4(b).

[535] 17 CFR 249.819.

[536] *Id.*

[537] 17 CFR 240.19b–4(b)(1), (l), (m)(1).

[538] 17 CFR 240.19b–4(j).

[539] 17 CFR 249.819.

[540] 17 CFR 240.17a–22.

[541] *Id.*

[542] By replacing the paper filing requirement for supplemental materials with an internet posting requirement, Rule 17a–22, as amended, would allow all of a registered clearing agency's regulatory authorities to access the materials; thereby eliminating the need to file an additional paper copy with the clearing agency's ARA. For this reason, with respect to a registered clearing agency for which the Commission is not the ARA, the amendments would remove the requirement to also file one paper copy of the supplemental materials with the clearing agency's ARA.

[543] *See* 17 CFR 240.19b–4(m).

[544] *See supra* section III.B.1.

broker–dealers, SBS Entities, and OTC derivatives dealers to electronically file with the Commission in Inline XBRL through the Commission's EDGAR system annual audited reports and related annual filings. The filings were previously made either in paper, via email, or voluntarily on the EDGAR system as PDF documents. In addition, the Commission is amending Rule 17a–12 to require OTC derivatives dealers to file the unaudited FOCUS Report Part II electronically through the SEC eFOCUS system instead of in paper. The Commission is also allowing electronic signatures in Rule 17a–5, 17a–12, and 18a–7 filings, which includes the FOCUS Report.

Broker-dealers, SBS Entities, and OTC derivatives dealers file FOCUS Reports Part II, IIA, or IIC, which are periodic unaudited reports about their financial and operational condition. The Commission is amending the instructions to Parts II, IIC, and IIA of the FOCUS Report to allow only one named officer's signature when the signature belongs to the firm's principal executive officer or principal financial officer (or their comparable officers). The Commission is also making corrective and clarifying amendments to FOCUS Report Part II, technical amendments to FOCUS Report Part IIA and amendments to FOCUS Report Part IIC for consistency with FFIEC Form 031. Finally, the Commission is amending Rules 17a–5, 18a–7, and Form X–17A–5 Part III to eliminate the requirement to notarize the oath or affirmation associated with broker-dealers' and SBS Entities' annual reports.

10. Rule 17h–2T

The Commission is amending paragraph (a)(2) of Rule 17h–2T to require that the quarterly and annual risk assessment reports be filed with the Commission electronically through EDGAR as an Interactive Data File in accordance with Rule 405 of Regulation S–T. The reports are filed using Form 17–H. The materials filed under the rule will not change, but the materials will be filed on EDGAR, and the financial statements required by Item 4 of the Form will be structured in Inline XBRL.

11. Rule 17a–19 and Form X–17A–19

In general, Rule 17a–19 requires national securities exchanges and associations to file with the Commission certain information required on Form X–17A–19 within five business days of the occurrence of the initiation of membership, change in membership, or termination of membership of any member. The Commission is amending Rule 17a–19 and Form X–17A–19 to require that filings providing such notifications be made on EDGAR, in a custom XML-based data language.

12. Rule 3a71–3(d)(1)(vi)

The ANE Exception is conditioned in part on the Registered Entity filing with the Commission an ANE Exception Notice. Prior to these amendments, Rule 3a71–3(d)(1)(vi) required a Registered Entity to file the ANE Exception Notice by submitting it to the electronic mailbox specified on the Commission's website. The Registered Entity could, but was not required to, withdraw an ANE Exception Notice by contacting the Commission to request that the notice be manually removed from the ANE Exception Notices web page.

The Commission is amending Rule 3a71–3(d)(1)(vi) to require the ANE Exception Notices to be filed electronically through EDGAR, but the Commission is not changing the information required in an ANE Exception Notice. The Commission also is amending Rule 3a71–3(d)(1)(vi) to: (1) provide that withdrawals of ANE Exception Notices shall be made electronically via EDGAR, and (2) require a Registered Entity to promptly withdraw its ANE Exception Notice if it becomes unregistered or otherwise ineligible to serve as the Registered Entity for purposes of the ANE Exception.

13. Rule 15fi–3(c)

Rule 15fi–3(c) requires an SBS Entity to promptly notify the Commission, and any applicable prudential regulator, of any security–based swap valuation dispute in excess of $20,000,000 (or its equivalent in any other currency) if not resolved within: (1) three business days, if the dispute is with a counterparty that is an SBS Entity; or (2) five business days, if the dispute is with a counterparty that is not an SBS Entity.[545] Rule 15fi–3(c) also requires SBS Entities to notify the Commission and any applicable prudential regulator, if the amount of any security-based swap valuation dispute that was the subject of a previous notice increases or decreases by more than $20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level.[546]

Prior to the amendments, Rule 15fi–3(c) required that VDNs be submitted to the Commission ''in a form and manner acceptable to the Commission.'' SBS Entities had two options for submitting VDNs: (1) an electronic submission in PDF format via EDGAR; or (2) submission in PDF format to a dedicated Commission email address.

The Commission is amending Rule 15fi–3(c) to affirmatively require SBS Entities to submit VDNs to the Commission electronically in EDGAR using a custom XML-based data language. This includes both the initial VDN and any subsequent amendments. Under these amendments, SBS Entities will no longer be able to submit VDNs to the Commission using a dedicated email address or in PDF format on EDGAR.

14. Rule 15fk–1(c)(2)(ii)(A)

Rule 15fk–1(c) requires that the CCO of an SBS Entity prepare and sign a CCO report. The CCO report must be submitted to the Commission within 30 days following the filing deadline for the SBS Entity's annual financial report with the Commission.[547] Rule 15fk–1(c) does not specify the manner in which the CCO report must be submitted. Accordingly, pursuant to the rule, an SBS Entity may submit its CCO report as a paper or electronic submission.

The amendment to Rule 15fk–1(c)(2)(ii)(A) does not change what the report must include. Rather, the amendment requires that the CCO report be submitted electronically in Inline XBRL through EDGAR. As with other entities that make submissions through EDGAR, these submissions are subject to the provisions of Regulation S–T and the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.[548]

B. Use of Information

1. Form ID

The information required to be filed electronically on Form ID allows the Commission staff to review applications for EDGAR access and, if the application is approved, assign CIKs (if the applicant does not already have a CIK) and provide instructions to generate EDGAR access codes to permit filing on EDGAR. Form ID is essential to EDGAR security.

2. Rules 6a–1, 6a–2, 6a–3, and Form 1

The information required pursuant to Rules 6a–1, 6a–2, and 6a–3 is necessary to enable the Commission to receive accurate and complete information from applicants seeking registration as

[545] *See* 17 CFR 240.15fi–3(c)(1).

[546] Each amended notice is required to be provided to the Commission and any applicable prudential regulator no later than the last business day of the calendar month in which the applicable security-based swap valuation dispute increases or decreases by the applicable dispute amount. *See* 17 CFR 240.15fi–3(c)(2).

[547] 17 CFR 240.15fk–1(c)(2)(ii)(A).

[548] 17 CFR 232.11.

national securities exchanges or an exemption from such registration (''exempt exchanges'') and from national securities exchanges and exempt exchanges, which enables the Commission to exercise its statutory oversight functions. Without the information submitted pursuant to Rule 6a–1 on Form 1, the Commission would not be able to determine whether the applicant has met the criteria for registration (or an exemption from registration) set forth in section 6 of the Exchange Act. The amendments, periodic updates of information, supplemental materials, and monthly reports submitted pursuant to Rules 6a–2 and 6a–3 are necessary to assist the Commission in its oversight of national securities exchanges and exempt exchanges.

3. Rule 6a–4 and Form 1–N

The information obtained under Rule 6a–4 and Form 1–N provides the Commission with basic information about Security Futures Product Exchanges. This information enables the Commission to carry out its statutorily mandated oversight functions and helps ensure that Security Futures Product Exchanges continue to be in compliance with the Exchange Act.

4. Rules 15aa–1 and 15aa–2; Form 15A

The information required pursuant to Rule 15aa–1 is necessary to enable the Commission to receive accurate and complete information from applicants seeking registration as national securities association which would enable the Commission to exercise its statutory oversight functions. Without the information submitted pursuant to Rule 15aa–1 on Form 15A, the Commission would not be able to determine whether the applicant has met the criteria for registration set forth in section 15A of the Exchange Act. The amendments, periodic updates of information, and supplemental materials submitted pursuant to Rule 15Aa–2 are necessary to assist the Commission in its oversight of national securities associations.

5. Rule 17ab2–1 and Form CA–1

The Commission uses the information disclosed on Form CA–1 to: (i) determine whether an applicant for registration as a clearing agency or for an exemption from such registration meets the standards for registration set forth in the Exchange Act; (ii) enforce compliance with the Exchange Act's registration requirements; and (iii) use as a reference for specific registered clearing agencies or exempt clearing agencies for compliance and investigatory purposes. The information required under Rule 17ab2–1 is essential for the Commission to perform its statutorily required duties.

6. Rule 19b–4(e) and Form 19b–4(e)

The information collected pursuant to Rule 19b–4(e) is designed to maintain an accurate record of all new derivative securities products by SROs, the listing and trading of which are not deemed to be proposed rule changes. The Commission reviews compliance with Rule 19b–4(e) through its routine inspections of the SROs.

7. Rule 19b–4(j) and Form 19b–4

The information collected pursuant to Rule 19b–4 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 be approved, disapproved, suspended, or if proceedings should be instituted to determine whether to approve or disapprove the proposed rule change. The Commission reviews compliance with Rule 19b–4 through its routine inspections of the SROs. The Commission is removing a manual signature requirement in the existing collection of information under Rule 19b–4 and on Form 19b–4 because it is unnecessary given the electronic signature already required by Form 19b–4.

8. Rule 17a–22

The information required to be posted on a registered clearing agency's website under the amendments to Rule 17a–22 is expected to assist the Commission in carrying out its statutorily mandated oversight functions with respect to clearing agencies. The Commission uses this information to determine: (i) whether a clearing agency is implementing procedural or policy changes and, if so, whether such changes are consistent with the purposes of section 17A of the Exchange Act; and (ii) whether a clearing agency has changed its rules without filing the actual or prospective change to the Commission as required by section 19(b) of the Exchange Act. The posting of such information on a registered clearing agency's website would improve transparency of a clearing agency's actions and communications to a larger group of potentially interested persons, including non-member entities that directly or indirectly use the clearing agency's services, investors, and the general public.

9. Rules 17a–5, 18a–7, and 17a–12

Reports required to be made under Rules 17a–5, 18a–7, and 17a–12 are used, among other things, to monitor the financial and operational condition of broker-dealers, SBS Entities, and OTC derivatives dealers by Commission staff and, to the extent applicable to the entity, by its designated examining authority (''DEA''). The reports required under Rules 17a–5, 18a–7, and 17a–12 are also one of the primary means of ensuring compliance with the Commission's financial responsibility rules (*e.g.,* Rule 15c3–1). A firm's failure to comply with these rules would severely impair the ability of the Commission (and the firm's DEA, if applicable) to protect investors, including customers and counterparties of the registrant.

10. Rule 17h–2T

The information required to be filed with the Commission under Rule 17h–2T is used by the Commission to monitor the activities of a covered broker-dealer's affiliates whose business activities are reasonably likely to have a material impact on the financial and operational condition of the broker-dealer.

11. Rule 17a–19 and Form X–17A–19

Upon the Commission's receipt of a Form X–17A–19 filing, the information is entered into a database, which is regularly shared with the SROs. Commission staff use the information contained in Form X–17A–19 to assign the appropriate SRO as DEA for the member firms. This information is also used by SIPC in determining which SRO is the collection agent for the SIPC Fund.

12. Rule 3a71–3(d)(1)(vi)

The information provided by a Registered Entity in connection with the filing of an ANE Exception Notice pursuant to Rule 3a71–3(d)(1)(vi), and any subsequent withdrawal, assists the Commission in evaluating market participants' compliance with the limitations on use of the ANE Exception, as well as assists Relying Entities and their affiliates in determining whether they have satisfied the ANE Exception's notice requirement and in monitoring their progress toward the ANE Exception's cap on inter-dealer security-based swaps. The amendment to Rule 3a71–3(d)(1)(vi) to move the filing of the ANE Exception Notice, and any subsequent withdrawal, to the Commission's EDGAR filing system should facilitate more efficient and timely transmission, dissemination, and analysis of this information.

13. Rule 15fi–3(c)

The information shared by counterparties to a security-based swap transaction during the portfolio reconciliation process, as contemplated by Rule 15fi–3, plays an important role in assisting those counterparties in identifying and resolving discrepancies involving key terms of their transactions on an ongoing basis. This information also allows those counterparties to improve their management of internal risks related to the enforcement of their rights and the performance of their obligations under a security-based swap. Moreover, requiring SBS Entities to agree in writing with each of their counterparties on the terms of the portfolio reconciliation (including, if applicable, agreement on the selection of any third-party service provider who may be performing the reconciliation) helps to minimize any discrepancies regarding the portfolio reconciliation process itself, thereby facilitating efficient and cost-effective operation. The requirement to report certain unresolved valuation disputes to the Commission assists the Commission in identifying potential issues with respect to an SBS Entity's internal valuation methodology and also could serve as an indication of a widespread market disruption in cases where the Commission receives a large number of such notices from multiple firms. The amendment to Rule 15fi–3(c) to require submission of the VDNs using the Commission's EDGAR system is intended to facilitate more efficient and secure transmission and efficient and effective analysis of this information.

14. Rule 15fk–1(c)(2)(ii)(A)

The information collected under Rule 15fk–1(c) assists the Commission staff's oversight and examination of SBS Entities compliance with the business conduct requirements for such entities.

C. Respondents

1. Form ID

The respondents to the collection of information required under Form ID are all entities that are required to file electronically on EDGAR under this release and that do not already have access to EDGAR. Such respondents must submit a Form ID, along with the notarized signature of an authorized individual, to obtain an EDGAR identification number (''CIK'') and access codes to file on EDGAR. The Commission estimates that these respondents would include the following entities not currently registered on EDGAR: 25 national securities exchanges and registered national securities associations as of February 15, 2024; 1,498 broker-dealers as of December 31, 2023; two Security Futures Product Exchanges as of April 1, 2024; 11 operational registered and exempt clearing agencies as of April 1, 2024;[549] and 24 Registered Entities.[550]

2. Rules 6a–1, 6a–2, 6a–3, and Form 1

The respondents to the collection of information required under Rule 6a–1 are new applicants applying to register as a national securities exchange or seeking an exemption from such registration. The Commission estimates that it would receive approximately one initial Form 1 filing per year.

The respondents to the collection of information required under Rules 6a–2 and 6a–3 are national securities exchanges and exempt exchanges. As of February 15, 2024, there are a total of 24 entities registered as national securities exchanges. These respondents file annual, triennial, and periodic amendments to their Form 1 under Rule 6a–2. These respondents also file supplemental materials and monthly reports under Rule 6a–3. There are no exempt exchanges that currently submit amendments under Rule 6a–2 or supplemental materials and monthly reports under Rule 6a–3.

3. Rule 6a–4, Form 1–N

The respondents to the collection of information required under Rule 6a–4 are futures exchanges that trade security futures products. Currently, there are two Security Futures Product Exchanges. These respondents file annual, triennial, and periodic amendments to their Form 1–N under Rule 6a–4(b). These respondents also file supplemental materials and monthly reports under Rule 6a–4(c). The Commission estimates that it will not receive any initial Form 1–N filings.[551]

4. Rules 15aa–1 and 15aa–2; Form 15A

The respondents to the collection of information required under Rule 15aa–1 are new applicants applying to register as a national securities association. The Commission estimates that it would receive one initial Form 15A filing per year.[552]

The respondents to the collection of information required under Rule 15aa–2 are national securities associations currently registered with the Commission. Currently, there is only one entity that will be required to file annual, triennial, and periodic amendments to its Form 15A under Rule 15aa–2.

5. Rule 17ab2–1, Form CA–1

The respondents to the collection of information required under Rule 17ab2–1 are registered and exempt clearing agencies, as well as applicants seeking to register as a clearing agency or seeking an exemption from such registration. As of April 1, 2024, there are eight registered clearing agencies, only six of which are operational,[553] and five exempt clearing agencies. The Commission estimates that it would receive one new Form CA–1 application filed each year.

6. Rule 19b–4(e), Form 19b–4(e)

The respondents to the collection of information required under Rule 19b–4(e) are SROs that list and trade new derivative securities products—national securities exchanges. As of February 15, 2024, there are 24 entities registered as national securities exchanges.

7. Rule 19b–4(j), Form 19b–4

The respondents to the collection of information required under Rule 19b–4(j) and Form 19b–4 are SROs (as defined by section 3(a)(26) of the Exchange Act), including national securities exchanges, national securities associations, registered clearing agencies, notice registered securities future product exchanges, and the MSRB. The Commission's current approved estimated number of respondents is 46 SROs.[554]

[549] As of Apr. 1, 2024, there are eight registered clearing agencies, six of which are operational, and five exempt clearing agencies.

[550] *See* Cross-Border Adopting Release, 85 FR at 6336 n.642; the Commission continues to estimate that up to 24 entities that engage in security-based swap dealing activity may rely on the ANE Exception.

[551] The Commission is basing its estimate on its historical experience with Form 1–N filings. In particular, since the adoption of the form in 2001, six initial Form 1–N filings have been made by futures exchanges. Based on the infrequent occurrence of filings, zero is a reasonable estimate.

[552] The Commission notes that since the adoption of section 15A of the Exchange Act as part of the Maloney Act in 1938, only two national securities associations have registered with the Commission. Currently, FINRA is the only national securities association registered with the Commission whereas the NFA is registered as a national securities association only for the limited purpose of regulating the activities of NFA members that are registered as brokers or dealers in security futures products under section 15(b)(11) of the Exchange Act.

[553] The Boston Stock Exchange Clearing Corporation and Stock Clearing Corporation of Philadelphia are currently registered with the Commission as clearing agencies but conduct no clearance or settlement operations. *See* Exchange Act Release No. 6329 (Jan. 3, 2011), 76 FR 1473 (Jan. 10, 2011); Exchange Act Release No. 63268 (Nov. 8, 2010), 75 FR 69730 (Nov. 15, 2010).

[554] *See* FR Doc. 2023–01613, 88 FR 5387 (Jan. 27, 2023) (Request to OMB for extension of Rule 19b–4 and Form 19b–4; SEC File No. 270–38; OMB Control No. 3235–0045).

8. Rule 17a–22

The respondents to the collection of information required under Rule 17a–22 are registered clearing agencies. As of April 1, 2024, there are eight registered clearing agencies, only six of which are operational.[555]

9. Rules 17a–5, 18a–7, and 17a–12

The respondents to file the annual reports required under Rule 17a–5 are broker-dealers. For the 12 months ended December 31, 2023, the Commission received 1,498 broker-dealer annual reports in paper form and 1,769 electronically via EDGAR. The Commission therefore estimates that approximately 3,267 broker-dealers are required to file annual reports with the Commission. As of December 31, 2023, five of those broker-dealers are ANC broker-dealers required to file supplemental reports under Rule 17a–5. The respondents to the annual reports collection of information required under Rule 18a–7 are SBS Entities that are not prudentially regulated. As of June 30, 2024, there are 18 SBS Entities, including nine foreign firms relying on substituted compliance, that are not prudentially regulated. The respondents to the annual reports collection of information under Rule 17a–12 are OTC derivatives dealers. There are three OTC derivatives dealers subject to Rule 17a–12 as of December 31, 2023.

There are 486 broker-dealers or non-broker-dealer SBS Entities that filed FOCUS Report Part II as of December 31, 2023. Of those Part II filers, 4 firms are domestic stand-alone swap dealers and 67 firms are domestic stand-alone introducing brokers. Bank SBS Entities file FOCUS Report Part IIC. As of June 30, 2024, there are 30 bank SBS Entities, including 21 foreign firms relying on substituted compliance. There are 2,946 broker-dealers that filed FOCUS Report Part IIA as of December 31, 2023.

10. Rule 17h–2T

The respondents to the collection of information required under Rule 17h–2T are broker-dealers. As of December 31, 2023, there are 241 broker-dealers that must file quarterly and annual risk assessment reports with the Commission under Rule 17h–2T.

11. Rule 17a–19 and Form X–17A–19

The respondents to the collection of information required under Rule 17a–19 are national securities exchanges and registered national securities associations. As of February 15, 2024, there are a total of 25 national securities exchanges and registered national securities associations.

12. Rule 3a71–3(d)(1)(vi)

The Commission estimates that up to 24 entities that engage in security-based swap dealing activity may rely on the ANE Exception.[556] To satisfy the ANE Exception, each of those up to 24 entities will make use of an affiliated Registered Entity that will be required to file an ANE Exception Notice and may subsequently decide to or may be required to file a withdrawal of the ANE Exception Notice. The amendment to Rule 3a71–3(d)(1)(vi) does not affect Commission's estimate of the number of respondents.

13. Rule 15fi–3(c)

The respondents to the collection of information under Rule 15fi–3(c) are registered SBS Entities. In the Proposing Release and a number of prior releases, including the release adopting the rules by which SBS Entities can register (and withdraw from registration) with the Commission, the Commission estimated that approximately 50 entities may meet the definition of SBSD, and up to five entities may meet the definition of MSBSP.[557] Accordingly, in the Proposing Release, the Commission preliminarily estimated that approximately 55 entities will be required to register under either category.[558] Since issuing the Proposing Release, the Commission received three additional applications for registration as an SBSD, for a total of 53,[559] but otherwise the Commission continues to believe that these estimates are appropriate. Thus, the Commission estimates that approximately 58 entities will be required to register with the Commission under either category, and will therefore be subject to Rule 15fi–3. When the Commission initially adopted Rule 15fi–3, it stated that, until SBS Entities were registered with the Commission, it was difficult for the Commission to determine the typical number of valuation disputes meeting the applicable thresholds that SBS Entities would be required to submit on an annual basis.[560] Because SBS Entities have been required to submit VDNs under Rule 15fi–3(c) for a limited time, it remains difficult for the Commission to determine the typical number of VDNs that an SBS Entity will submit annually.

14. Rule 15fk–1(c)(2)(ii)(A)

The respondents to the collection of information under Rule 15fk–1(c) are registered SBS Entities. As of June 21, 2024, there were 53 SBS Entities registered with the Commission.[561] Of these entities, the Commission estimates that none will be first-time EDGAR users needing to obtain EDGAR access credentials in order to submit its CCO report because they have already registered as SBS Entities through EDGAR.

D. Total Initial and Annual Reporting and Recordkeeping Burdens

1. Form ID

Currently Approved Burden Estimate

Form ID (OMB Control No. 3235–0328) must be completed and filed with the Commission by all individuals, companies, and other organizations who seek access to file electronically on EDGAR. Accordingly, a filer that does not already have access to EDGAR must submit a Form ID, along with the notarized signature of an authorized individual, to obtain an EDGAR identification number (''CIK'') and access codes to file on EDGAR. The Commission currently estimates that Form ID would take 0.30 hours to prepare, resulting in an annual industry-wide burden of 17,199 hours.[562]

Revision to Burden Estimate

The Commission estimates that each filer that currently does not have access to EDGAR would incur an initial, one-time burden of 0.30 hours to complete

[555] *See supra* note 560560.

[556] *See* Cross-Border Adopting Release, 85 FR at 6336 n.642.

[557] *See* Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48964, 48990 (Aug. 14, 2015). *See also* Risk Mitigation Adopting Release, 85 FR at 6383; Trade Acknowledgment and Verification of Security-Based Swap Transactions, Exchange Act Release No. 78011 (June 8, 2016), 81 FR 39807, 39830 (June 17, 2016); Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Exchange Act Release No. 86175 (June 21, 2019), 84 FR 43872, 43960 (Aug. 22, 2019).

[558] *See* Proposing Release, 88 FR at 23973–74.

[559] *See* List of Security-Based Swap Dealers and Major Security-Based Swap Participants, *available at https://www.sec.gov/tm/List-of-SBS-Dealers-and-Major-SBS-Participants*. The respondent registered SBSDs include 21 SBSDs that, as of June 21, 2024, notified the Commission of their intent to rely on substituted compliance with respect to one more Exchange Act rules pursuant to a Commission order granting substituted compliance. *See https://www.sec.gov/tm/Substituted-compliance-Notices.*

[560] *See* Risk Mitigation Adopting Release 85 FR at 6385–86.

[561] There are currently no MSBSPs registered with the Commission.

[562] *See* Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Form ID (Dec. 20 2021), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202112-3235-0328.*

and submit a Form ID.[563] Therefore, the one-time industrywide reporting burden associated with the requirements to file on EDGAR pursuant to this release is 7.5 hours for national securities exchanges and registered national securities associations;[564] 0.6 hours for security futures product exchanges;[565] 3.3 hours for registered and exempt clearing agencies;[566] 449.4 hours for broker-dealers not already filing their annual audits on EDGAR;[567] 0 hours for OTC derivatives dealers not already filing their annual audits on EDGAR;[568] and 7.2 hours for Registered Entities.[569]

2. Rules 6a–1, 6a–2, 6a–3 and Form 1

Currently Approved Burden Estimate[570]

Initial filings on Form 1 by applicants seeking registration as a national securities exchange or an exemption from such registration are made on a one-time basis. The Commission estimates that it would receive approximately one initial Form 1 filing per year. The Commission also estimates that each respondent who submits an initial Form 1 filing would incur an average burden of 880 hours to complete and file an initial Form 1.[571] With respect to amendments to Form 1, the Commission estimates that each registered or exempt exchange would file 11 amendments or periodic updates to Form 1 per year.[572] Hours required for amendments to Form 1 that must be submitted to the Commission can vary, depending upon the nature and extent of the amendment, the exchange's corporate structure, and the exchange's business activities. The Commission estimates that each exchange would incur an average burden of 25 hours per filing to comply with Rule 6a–2.[573] Accordingly, the estimated average annual burden to update and amend Form 1 is 275 hours per exchange[574] and the estimated aggregate annual burden for all national securities exchanges is 6,600 hours.[575]

With respect to supplemental information and monthly reports, the Commission estimates that each exchange would file such materials 12 times per year. The Commission estimates that each exchange would incur an average burden of 0.5 hours per filing to comply with Rule 6a–3.[576] Accordingly, the estimated average annual burden to submit supplemental information and monthly reports is six hours per exchange[577] and the estimated aggregate annual burden for all exchanges is 144 hours.[578] Thus, the Commission estimates that the total aggregate annual burden to comply with Rules 6a–2 and 6a–3 is 6,744 hours.[579]

Revision to Burden Estimate

The Commission recognizes that the amendments to Rules 6a–1, 6a–2, and 6a–3 impose certain burdens on respondents. Although the information to be provided on filings made pursuant to Rules 6a–1, 6a–2, and 6a–3 will not change, respondents will be required to submit documents electronically. The instructions to Form 1 will be amended to no longer require respondents to make and submit multiple copies of the Form 1 submission. Currently, respondents must make two copies of each filing to be submitted pursuant to Rules 6a–1 and 6a–2. Generally, the time spent making such copies instead is expected to be spent uploading documents on EDGAR. Where a filing could include multiple exhibits, the time required to upload documents should be less than the time required to make two copies of each exhibit, particularly when the exhibit contains numerous pages. Accordingly, the Commission estimates that, on average, filing an initial Form 1 application electronically will require two fewer hours of clerical work from the current baseline. The aggregate initial burden on all respondents submitting an initial Form 1 application electronically will be two hours less than the current baseline. Accordingly, the aggregate initial burden on all respondents to complete and submit an initial Form 1 application is expected to be 878 hours.[580] In addition, the Commission estimates that, on average, filing amendments to Form 1 electronically will require 1 fewer hour of clerical work from the current baseline, as the amount of material filed pursuant to Rule 6a–2 may be less than an initial Form 1 application. The aggregate ongoing burden on all exchanges submitting a periodic amendment electronically will be 264 hours less than the current baseline.[581] Accordingly, the aggregate ongoing burden on all exchanges to submit periodic amendments to Form 1 electronically is expected to be 6,336 hours.[582]

With respect to material filed under Rule 6a–3, while in some instances there may be a marginal reduction in burden hours associated with submitting these materials electronically as a result of a reduction in printing requirements, for purposes of making a PRA burden estimate on average, the most recently approved baseline is expected to represent a reasonable estimate of the burden hours associated with submitting supplemental information and monthly reports. The time required to compile copies of these materials is expected, on average, to be equivalent to the time required to upload those filings electronically. The Commission estimates that, on average, filing supplemental information and monthly reports electronically will not increase or decrease burden hours from the current baseline of 0.5 hours. Therefore, the aggregate burden associated with filing supplemental information and monthly reports will be

[563] The Commission does not estimate a burden for SBS Entities since these firms have already filed Form ID so they can file Form SBSE on EDGAR.

[564] 0.30 hours × 25 national securities exchanges and registered national securities associations = 7.5 hours.

[565] 0.30 hours × 2 security futures product exchanges = 0.6 hours.

[566] 0.30 hours × 11 operational registered and exempt clearing agencies = 3.3 hours.

[567] 0.30 hours × 1,498 broker-dealers not already filing on EDGAR = 449.4 hours.

[568] 0.30 hours × 0 OTC derivatives dealers not already filing on EDGAR = 0 hours.

[569] 0.30 hours × 24 Registered Entities = 7.2 hours. The Commission conservatively estimates that none of the Registered Entities will have EDGAR access at the time of filing an ANE Exception Notice or withdrawing an ANE Exception Notice, even though most, if not all, Registered Entities will have accessed EDGAR to file other information with the Commission. A Registered Entity that is an SBSD must file its application for registration electronically on EDGAR, and this requirement has been in place from the original compliance date for registration of SBSDs. *See* 17 CFR 240.15Fb2–1(c). Additionally, pursuant to amendments being adopted in this release, a Registered Entity that is a broker will be required to file electronically on EDGAR certain annual reports, and many brokers already do so voluntarily under existing Commission rules. *See infra* Sections VIII and XI.B.

[570] For an explanation of the collection of information under these rules and Form 1, *see supra* section IX.A.2.

[571] *See* FR Doc. 2022–01616, 87 FR 4297 (Jan. 27, 2022) (Submission for OMB Review; Comment Request, Extension: Rules 6a–1 and 6a–2, Form 1; SEC File 270–0017; OMB Control No. 3235–0017) (hereinafter ''Rules 6a–1 and 6a–2 PRA Update'').

[572] *See* Rules 6a–1 and 6a–2 PRA Update.

[573] *See* Rules 6a–1 and 6a–2 PRA Update.

[574] 11 Form 1 Amendments annually × 25 burden hours per Form 1 Amendment = 275 burden hours per exchange.

[575] 275 burden hours per exchange × 24 national securities exchanges = 6,660 aggregate burden hours.

[576] *See* FR Doc. 2022–07060, 87 FR 19541 (Apr. 4, 2022) (Submission for OMB Review; Comment Request; Extension: Rule 6a–3; SEC File 270–0015; OMB Control No. 3235–0021).

[577] 12 filings annually × 0.5 hours per filing = 6 burden hours per exchange.

[578] 6 burden hours per exchange × 24 national securities exchanges = 144 aggregate burden hours.

[579] 6,600 burden hours to comply with Rule 6a–2 + 144 burden hours to comply with Rule 6a–3 = 6,744 aggregate burden hours.

[580] 878 burden hours per initial application × 1 initial application per year = 878 burden hours.

[581] Reduction of 1 hour per response × 264 responses per year = 264 fewer burden hours.

[582] 264 burden hours per exchange × 24 national securities exchanges = 6,336 aggregate burden hours.

180 hours.[583] Thus, the total aggregate annual burden to comply with Rules 6a–2 and 6a–3 will be 7,212 hours.[584]

The Commission also recognizes that the requirement to tag certain disclosures (specifically, the financial statements and the manner of operations description) on the initial Form 1 in Inline XBRL would impose burdens on respondents. To file reports in Inline XBRL, a filer must purchase Inline XBRL tagging software to apply Inline XBRL tags to the reports before filing them on EDGAR, or employ a tagging service provider to apply the Inline XBRL tags on its behalf. As discussed in further detail below, this burden will be mitigated for some exchanges that are affiliated with public reporting companies subject to existing Inline XBRL structuring requirements, and thus may be able to leverage the compliance software and experience of their reporting affiliates.[585]

The Commission estimates respondents will incur an average of 20 burden hours to tag the initial Form 1 in Inline XBRL (a total annual industry-wide burden of 20 hours), and an average of 14 burden hours to tag financial statements included in annual amendments to Form 1 in Inline XBRL (a total annual industry-wide burden of 336 hours).[586] With respect to the external monetary costs (*e.g.,* the costs of purchasing and renewing the necessary software to tag filings in Inline XBRL) that are incurred in addition to the internal time burden, the Commission estimates an annual average cost of $5,000 to tag Form 1 (including initial and subsequent filings) in Inline XBRL (a total annual industry-wide cost of $125,000).[587]

The Commission also recognizes the requirement to structure certain other disclosures on Form 1 in a custom XML data language would impose burdens on respondents.[588] The Commission estimates respondents will incur an average of 3 burden hours to structure disclosures in initial Form 1 filings in custom XML (a total annual industrywide burden of 3 hours), and an average of 2 burden hours to structure disclosures in subsequent Form 1 filings in custom XML (a total annual industrywide burden of 528 hours).[589]

To summarize, the current estimated annual burden to submit filings pursuant to Rules 6a–1, 6a–2, and 6a–3 is 7,624 hours.[590] The Commission estimates that the annual burden to submit these filings will be 8,281 hours.[591] In addition, the Commission estimates that the total annual industry-wide external cost of the Inline XBRL requirements related to Form 1 will be $125,000.[592]

Form 1 and Rules 6a-1, 6a-2, and 6a-3 - Summary of Hourly Burdens

Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Burden per Entity per Response	Initial Burden Annualized per Entity per Response	Ongoing Burden per Entity per Response	Annual Burden Per Entity per Response	Total Annual Burden Per Entity	Total Industry Burden
Rule 6a-1 (Initial Form 1 Application)	Initial Reporting	1	1	901	901	0	901	901	901
Rule 6a-2(b) (Annual Form 1 Amendments)	Periodic Reporting	24	1	0	0	40	40	40	960
Rule 6a-2(a) and 6a-2(c) (Periodic Form 1 Amendments)	Periodic Reporting	24	10	0	0	26	26	260	6,240
Rule 6a-3 (Supplemental Materials and Monthly Volume Reports)	Periodic Reporting	24	15	0	0	.5	.5	7.5	180
TOTAL HOURLY BURDENS FOR ALL RESPONDENTS									**8,281**

Form 1 and Rules 6a-1, 6a-2, and 6a-3 - Summary of Dollar Cost

Name of Information Collection	Burden Type	Number of Respondents	Annual Cost Per Respondent	Total Annual Cost Per Information Collection
Rule 6a-1 (Initial Form 1 Application)	Initial Reporting	1	$5,000	$5,000
Rule 6a-2(b) (Annual Form 1 Amendments)	Periodic Reporting	24	$5,000	$120,000
TOTAL AGGREGATE COST FOR ALL RESPONDENTS				**$125,000**

[583] 0.5 burden hours × 360 responses per year = 180 burden hours.

[584] 7,032 burden hours to comply with Rule 6a–2 + 180 burden hours to comply with Rule 6a–3 = 7,212 aggregate burden hours.

[585] *See infra* section X.C.2.b. As explained further in the discussion of structured data costs, the Commission is now estimating that only half of affiliated respondents (*i.e.,* 8 out of the 17 affiliated exchanges) will experience reduced burdens, and is therefore increasing the burden estimates for Inline XBRL tagging of Form 1 and annual amendments thereto compared to the proposal.

[586] 20 burden hours to tag Exhibits D, E (in part), and I in initial Form 1 in Inline XBRL × 1 response per year = 20 burden hours. 14 burden hours to tag financial statements in annual amendments to Form 1 in Inline XBRL × 24 responses per year = 336 burden hours.

[587] $5,000 per year × (24 exchanges + 1 exchange filing an initial Form 1 application) = $125,000. *See infra* section X.C.2.b for further detail on structured data (Inline XBRL and custom XML) compliance costs, including estimated cost ranges and factors underlying expected variance in structured data costs across different filers. We have accounted for this expected variance in the calculations of average burden and cost figures presented in this section.

[588] This does not include the monthly volume reports that exchanges must file under Rule 6a–3(b) of the Exchange Act, as we assume exchanges would file those disclosures, which comprise a very limited number of data points, using a fillable form that EDGAR would convert to custom XML. *See* 17 CFR 240.6a–3(b).

[589] 3 burden hours to structure disclosures in initial Form 1 filings in custom XML × 1 response per year = 3 burden hours. 2 burden hours to structure disclosures in subsequent Form 1 filings in custom XML × 264 responses per year = 528 burden hours. Our estimates assume exchanges would choose to encode the disclosures in the Exhibits to Form 1 in custom XML and submit the custom XML documents directly to EDGAR, rather than manually completing fillable EDGAR forms to be converted into custom XML documents. *See infra* section X.C.2.b.

[590] 880 burden hours for Rule 6a–1 + 6,600 burden hours for Rule 6a–2 + 144 burden hours for Rule 6a–3 = 7,624 burden hours.

[591] 901 burden hours for Rule 6a–1 (878 burden hours to file electronically + 20 burden hours to tag in Inline XBRL + 3 burden hours to tag in custom XML) + 7,200 burden hours for Rule 6a–2 (6,336 burden hours to file electronically + 336 burden hours to tag Exhibits in Inline XBRL + 528 burden hours to structure Exhibits in custom XML) + 180 burden hours for Rule 6a–3 = 8,281 burden hours.

[592] $5,000 industry-wide cost for Rule 6a–1 (to tag in Inline XBRL an initial Form 1 filing) + $120,000 industry-wide cost for Rule 6a–2 (to tag in Inline XBRL periodic updates to Form 1) = $125,000.

3. Rule 6a–4, Form 1–N

Currently Approved Burden Estimate [593]

Initial filings on Form 1–N by futures exchanges submitting notice registration as a national securities exchange solely for the purpose of trading security futures products are made on a one-time basis. The Commission estimates that it would receive zero initial Form 1–N filings per year.[594] The Commission estimates that the total burden for all respondents to file initial Form 1–N filings per year would be 0 hours (31 hours/respondent/year × 0 respondents). The Commission estimates that the total annual burden for all respondents to provide periodic amendments [595] to keep the Form 1–N accurate and up to date as required under Rule 6a–4(b)(1) would be 30 hours (15 hours/respondent per year × 2 respondents). The Commission estimates that the total annual burden for all respondents to provide annual amendments under Rule 6a–4(b)(3) would be 30 hours (15 hours/respondent/year × 2 respondents). The Commission estimates that the total annual burden for all respondents to provide triennial amendments [596] under Rule 6a–4(b)(4) would be 13 hours (20 hours/response × 2 responses every three years). The Commission estimates that the total annual burden for the filing of the supplemental information [597] and the monthly reports required under Rule 6a–4(c) would be 12 hours (6 hours/respondent per year × 2 respondents). Thus, the Commission estimates the total annual burden for complying with Rule 6a–4 is 86 hours.

Revision to Burden Estimate

The Commission recognizes that the amendments to Rule 6a–4 impose certain burdens on respondents. Although the information to be provided on filings made pursuant to Rule 6a–4 will not change, respondents will be required to submit documents electronically. The instructions to Form 1–N are amended to no longer require respondents to make and submit multiple copies of the Form 1–N submission. Currently, respondents must make two copies of each filing in addition to the original Form 1–N to be submitted pursuant to Rule 6a–4. Generally, the time spent making such copies instead will be spent uploading documents through EDGAR. Where a filing could include multiple exhibits, generally, the time required to upload documents will be less than the time required to make two copies of each exhibit, particularly when the exhibit contains numerous pages.

The Commission estimates that, on average, filing an initial Form 1–N filing electronically will require, generally, two fewer hours of clerical work from the current baseline. Therefore, instead of 31 hours, an initial filing will require 29 hours. However, because the Commission estimates that there will be zero respondents submitting initial filings, the burden would remain zero hours (29 hours/respondent/year × 0 respondents/year).

The Commission estimates that, on average, periodic amendments to Form 1–N electronically will require 1 fewer hour of clerical work from the current baseline. The aggregate ongoing burden on all respondents submitting periodic amendments electronically will be two hours fewer than the current baseline. Accordingly, the Commission estimates that the aggregate burden on all respondents to submit periodic amendments to Form 1–N will be 28 hours (14 hours/respondent/year × 2 respondents).

Similarly, the Commission estimates that, on average filing annual amendments to Form 1–N electronically will require 1 fewer hour of clerical work from the current baseline. The aggregate burden on all respondents submitting annual amendments electronically will be two hours fewer than the current baseline. Accordingly, the Commission estimates that the aggregate burden on all respondents to provide annual amendments to Form 1–N will be 28 hours (14 hours/respondent/year × 2 respondents).

The Commission estimates that, on average, filing triennial amendments to Form 1–N will require 1 fewer hour of clerical work from the current baseline. Accordingly, the Commission estimates that the total annual burden for all respondents to provide triennial amendments to Form 1–N will be 13 hours [598] (19 hours/response × 2 respondents per year × .33 responses per year).

With respect to supplemental material filed under Rule 6a–4, while in some instances there may be a marginal reduction in burden hours associated with submitting these materials electronically as a result of a reduction in printing requirements, for purposes of making a PRA burden estimate, on average, the most recently approved baseline is expected to represent an appropriate estimate of the burden hours associated with submitting supplemental information and monthly reports. The time required to compile copies of these materials would, on average, be equivalent to the time required to upload those filings electronically. The Commission estimates that, on average, filing supplemental information and monthly reports electronically will not increase or decrease burden hours from the current baseline of six hours/respondent/year. Accordingly, the aggregate burden associated with filing supplemental information and monthly reports will continue to be 12 hours. Thus, the total aggregate annual burden to comply with Rule 6a–4 will be 81 hours.[599]

[593] For an explanation of the collection of information under Rule 6a–4 and Form 1–N, *see supra* section IX.A.3.

[594] The Commission is basing its estimate on its historical experience with Form 1–N filings. In particular, since the adoption of the form in 2001, six initial Form 1–N filings have been made by futures exchanges. Based on the infrequent occurrence of filings, zero is a reasonable estimate.

[595] 17 CFR 240.6a–4(b)(1).

[596] 17 CFR 240.6a–4(b)(3) and (4).

[597] 17 CFR 240.6a–4(c).

[598] Even with the one hour per response reduction, the annual total burden would still be 13 hours due to rounding. The annual burden will be reduced from 13.33 to 12.67, which both round to 13 hours.

[599] The Commission currently estimates that compliance with Form 1–N and Rule 6a–4 results in $304 of annual clerical costs (*i.e.,* mailing forms and copying forms etc.). The Commission estimates that these costs will be eliminated with the electronic filing of Form 1–N.

Form 1-N and Rule 6a-4 - Summary of Hourly Burdens									
Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Burden per Entity per Response	Initial Burden Annualized per Entity per Response	Ongoing Burden per Entity per Response	Annual Burden Per Entity per Response	Total Annual Burden Per Entity	Total Industry Burden
Rule 6a-4(b)(1) (Periodic Form 1-N Amendments)	Periodic Reporting	2	1	0	0	14	14	14	28
Rule 6a-4(b)(3) (Annual Form 1-N Amendments)	Periodic Reporting	2	1	0	0	14	14	14	28
Rule 6a-4(b)(4) (3-Year Form 1-N Amendments)	Periodic Reporting	2	.333	0	0	19	19	6.33	12.66
Rule 6a-4(c) (Supplemental Form 1-N Amendments)	Periodic Reporting	2	12	0	0	.5	.5	6	12
							TOTAL HOURLY BURDEN FOR ALL RESPONDENTS		80.66

4. Rules 15aa–1 and 15aa–2; Form 15A

Currently Approved Burden Estimate

As is noted above, due to the length of time since Control Nos. 3235–0030 and 3235–0044 were last active, there are no currently approved burdens for Rules 15Aa–1 and 15Aj–1 (redesignated as Rules 15aa–1 and 15aa–2, respectively) and Form 15A.[600]

Revision to Burden Estimate

Initial filings on new Form 15A by an applicant seeking registration as a national securities association are made on a one-time basis.[601] The Commission estimates that it will receive one initial Form 15A filing per year.[602] Because the filing of an initial Form 15A is expected to be substantially similar to an initial Form 1 filing, the Commission estimates that each respondent will incur an average burden of 878 hours to complete and file an initial Form 15A.[603]

Based on the number of applications for registration as a national securities association the Commission has received, the Commission estimates that it will receive not more than one initial Form 15A filing per year. The Commission estimates that a respondent will incur an average burden of 878 hours to file an initial Form 15A.

With respect to the amendments to new Form 15A, the Commission estimates that each registered association will file 11 amendments or periodic updates to Form 15A per year.[604] The number of hours required for amendments to Form 15A (that must be submitted to the Commission) can vary depending upon the nature and extent of the amendment, the association's corporate structure, and the association's business activities. The Commission estimates that an association will incur an average burden of 24 hours per filing to comply with Rule 15aa–2.[605] Accordingly, the estimated average annual burden to update and amend Form 15A is 264 hours per association [606] for an estimated aggregate annual burden for all national securities associations of 264 hours.[607]

Form 15A - Summary of Hourly Burdens									
Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Burden per Entity per Response	Initial Burden Annualized per Entity per Response	Ongoing Burden per Entity per Response	Annual Burden Per Entity per Response	Total Annual Burden Per Entity	Total Industry Burden
Rule 15aa-1 (Initial Form 15A Application)	Initial Reporting	1	1	878	878	0	878	878	878
Rule 15aa-2 (Annual Form 15A Amendments)	Periodic Reporting	1	11	0	0	24	24	264	264
							TOTAL HOURLY BURDEN FOR ALL RESPONDENTS		1,142

[600] *See supra* note 501.

[601] For an explanation of the collection of information under Rules 15Aa–1 and 15Aj–1 that are being redesignated as Rules 15aa–1 and 15aa–2 and Forms X–15AA–1, X–15AJ–1, and X–15AJ–2 that are being redesignated as Form 15A, *see supra* section IX.A.4.

[602] *See* Exchange Act Rule 15aa–1, 17 CFR 240.15aa–1 and 17 CFR 249.801.

[603] *See* FR Doc. 2019–04007, 84 FR 8138 (Mar. 6, 2019) (Request to OMB for Extension of Rule 6a–1, Rule 6a–2 and Form 1; SEC File 270–0017; OMB Control No. 3235–0017) (hereinafter ''Rules 6a–1 and 6a–2 PRA Update''). The Commission currently estimates that an initial Form 1 filing would incur an average burden of 880 hours, less the efficiencies contemplated in this release that no longer require the submission of duplicate paper copies (a reduction of 2 burden hours per respondent). *See supra* section IX.D.2.

[604] The requirements of Rule 15aa–2 are substantively similar to the requirements of Rules 6a–1 and 6a–2. As a result, the Commission relies on the past history of amendments and periodic updates submitted under those rules in determining its estimate of the number of amendments the Commission will receive under Rule 15A. The Commission estimates that each registered or exempt exchange will file 11 amendments or periodic updates to Form 1 per year.

[605] Attorney at 10 hours + Accountant at 10 hours + Compliance Clerk at 4 hours = 24 burden hours. The instructions to Form 15A will be amended to no longer require respondents to make and submit multiple copies of the Form 15A submission. Currently, respondents must make two copies of each filing to be submitted pursuant to Rule 15Aa–1 and 15Aaj–1. The time spent making such copies instead is expected to be spent uploading documents through EDGAR. Where a filing could include multiple exhibits, the time required to upload documents is expected to be less than the time required to make two copies of each exhibit, particularly when the exhibit contains numerous pages. The Commission estimates that, on average, filing amendments to Form 15A electronically will require 1 fewer hour of clerical work compared to the submission of physical copies as contained in the most recent PRA updates for Rule 6a–1 and 6a–2.

[606] 11 Form 15Aa–2 amendments annually × 24 burden hours per Form 15A amendment = 264 burden hours per association.

[607] 264 burden hours per association × 1 national securities association = 264 aggregate burden hours.

5. Rule 17ab2–1, Form CA–1

Currently Approved Burden Estimate

The Commission has previously discussed the requirements of Rule 17ab2–1 and Form CA–1 above in IX.A.5.

The Commission estimates that, on average, each initial Form CA–1 requires approximately 340 hours to complete and submit for approval, and that, on average, the Commission receives one application each year.[608] This burden is composed primarily of a one-time reporting burden that reflects the applicant's staff time to prepare and submit the Form CA–1 to the Commission.[609] With respect to amendments to Form CA–1, the Commission estimates that, on average, an amendment requires 60 hours of the exempt or registered clearing agency's staff time,[610] although the time burden related to preparing and submitting an amendment widely varies depending on the nature of the information that needs to be updated. The Commission estimates that, on average, it receives one amendment per year. Accordingly, the Commission estimates that the aggregate annual burden associated with compliance with Rule 17ab2–1 and Form CA–1 is 400 hours.

Revision to Burden Estimate

The Commission recognizes that the amendments to Rule 17ab2–1 impose certain burdens on respondents. Although the information to be provided on filings made pursuant to Rule 17ab2–1 would not change, respondents would be required to submit documents electronically. The instructions to Form CA–1 would be amended to no longer require respondents to make and submit multiple copies of the same form. Currently, respondents must make four copies of Form CA–1. The time spent making such copies is expected to now be spent uploading documents through EDGAR. Where a filing may include multiple exhibits, the time required to upload documents is expected to be slightly less than the time required to make copies of each exhibit. As the number of exhibits required to be submitted with Form CA–1 is roughly equivalent to the number of exhibits required by an initial Form 1 application, the overall burden is expected to be two hours less (for either an initial application or an amendment) to make an electronic filing, compared to making the paper copies. Thus, the aggregate annual burden associated with compliance with Rule 17ab2–1 and Form CA–1, other than the structuring requirement discussed below, is expected to be approximately 396 hours.

The Commission also recognizes that the requirement to file Form CA–1 in Inline XBRL (in part) and in custom XML (in part) would impose burdens on respondents.[611] The Commission estimates respondents would incur an average of 18 burden hours to structure financial statements and narrative disclosures in initial applications on Form CA–1 in Inline XBRL (resulting in a total annual industry-wide burden of 18 hours) and an average of 12 burden hours to structure financial statements and narrative disclosures in subsequent amendments on Form CA–1 in Inline XBRL (resulting in a total annual industry-wide burden of 12 hours).[612] The Commission further estimates respondents would incur average annual external monetary costs (*e.g.,* the cost of purchasing and renewing the necessary Inline XBRL tagging software) of $3,500 to structure financial statements and narrative disclosures included in Form CA–1 in Inline XBRL (resulting in a total annual industry-wide burden of an average of $3,500).[613] The Commission estimates respondents would incur an average of 3 burden hours to structure other disclosures in initial applications on Form CA–1 in a custom XML data language (resulting in a total annual industry-wide burden of 3 hours) and an average of 2 burden hours to structure those disclosures in subsequent amendments on Form CA–1 in custom XML (resulting in a total annual industry-wide burden of 2 hours).[614] The structured data requirements for Form CA–1 would thus entail an estimated total annual industry-wide burden of 21 burden hours and $3,500 in external monetary costs for initial applications, and an estimated total annual industry-wide burden of 14 burden hours and $3,500 in external monetary costs for subsequent amendments.[615]

6. Rule 19b–4(e), Form 19b–4(e)

Currently Approved Burden Estimate

The Commission's currently approved estimate to complete and submit one Form 19b–4(e) is 1 hour, for an aggregate annual burden of 2,331 hours.[616]

Revision to Burden Estimate

The amendment to Rule 19b–4(e) rescinding Form 19b–4(e) and instead requiring an SRO to publicly report the information currently provided in Forms 19b–4(e) on its internet website will impose certain burdens on respondents. Respondents will be required to use the most recent versions of the XML schema (*i.e.,* data language) and the associated PDF renderer as published on the Commission's website to post the information required under Rule 19b–4(e) for each new derivative securities product. Currently, respondents must make nine copies of Form 19b–4(e); however, the form consists of a single page and does not require respondents to submit exhibits. In some instances, there may be a marginal change in burden hours associated with posting the same

[608] *See* FR Doc. 2020–18498, 85 FR 52178 (Aug. 24, 2020) (Request to OMB for Extension of Rule 17Ab2–1 and Form CA–1; SEC File No. 270–203; OMB Control No. 3235–0195).

[609] Compliance Attorney at 300 hours + Chief Compliance Officer at 40 hours = 340 burden hours.

[610] Compliance Attorney at 40 hours + Chief Compliance Officer at 20 hours = 60 burden hours.

[611] The amendments would require Schedule A and Exhibits C, F, H, J, K, L, M, O, R, and S of Form CA–1 to be structured in Inline XBRL, and would require the execution page and Exhibits A (in part), B, D, E (in part), I, N, and Q to be structured in custom XML. *See supra* section II.D.5; *see also supra* section VII.A.

[612] 18 hours per initial application × 1 initial application per year = 18 aggregate burden hours. 12 hours per subsequent amendment × 1 subsequent amendment per year = 12 aggregate burden hours.

[613] $3,500 per initial application × 1 initial application per year = $3,500 aggregate cost per year. $3,500 per subsequent amendment × 1 subsequent amendment per year = $3,500 aggregate cost per year.

[614] 3 hours per initial application × 1 initial application per year = 3 aggregate burden hours per year. 2 hours per subsequent amendment × 1 subsequent amendment per year = 2 aggregate burden hours per year. Our estimates assume clearing agencies would choose to encode their disclosures in custom XML and submit the custom XML documents directly to EDGAR, rather than manually completing fillable EDGAR forms to be converted into custom XML documents. *See infra* section X.C.2.b. Consistent with burden estimates in prior Commission releases, the burden estimates here assume Inline XBRL tagging would be done by a compliance attorney, while custom XML structuring would be done by a programmer. *See* Shortening the Securities Transaction Settlement Cycle, Release No. 34–94196 (Feb. 9, 2022), 87 FR 10436, 10491 (Feb. 24, 2022); Money Market Fund Reforms, Release No. IC–34441 (Dec. 15, 2021), 87 FR 7248, 7332 (Feb. 8, 2022).

[615] 18 hours and $3,500 for Inline XBRL structuring + 3 hours for custom XML structuring = 21 hours and $3,500 per initial application) × 1 initial application per year = 21 aggregate burden hours per year and $3,500 in aggregate external monetary cost per year. 12 hours and $3,500 for Inline XBRL structuring + 2 hours for custom XML structuring per subsequent amendment = 14 hours and $3,500 per subsequent amendment × 1 subsequent amendment per year = 14 aggregate burden hours per year and $3,500 in aggregate external monetary cost per year. *See infra* section X.C.2.b for further detail on structured data (Inline XBRL and custom XML) compliance costs, including estimated cost ranges and factors underlying expected variance in structured data costs across different filers.

[616] *See* FR Doc. 2022–17308, 87 FR 49894 (Aug. 12, 2022) (Request to OMB for extension of Rule 19b–4(e) and Form 19b–4(e); SEC File No. 270–447; OMB Control No. 3235–0504).

information as is required on current Form 19b–4(e) on a respondent's website. However, given the relatively small amount of data to be structured, rendered, and posted for each new derivative securities product, for purposes of making a PRA burden estimate the Commission estimates that, on average, the requirement to structure the information in a custom XML data language, render it using the associated PDF renderer, and post it on a respondent's website continue to be 1 burden hour for each new derivative securities product, and that the time to structure, render and post the first new derivative securities product per respondent is an additional 0.5 hours. Accordingly, the Commission estimates that the total additional initial hour burden will be 12 hours, and the total annual hour burden will continue to be 2,331 hours per year associated with the structuring, rendering, and posting of information under Rule 19b–4(e).[617] The Commission does not estimate respondents will incur external monetary costs under Rule 19b–4(e).

Rule 19b-4(e) - Summary of Hourly Burdens									
Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Burden per Entity per Response	Initial Burden Annualized per Entity per Response	Ongoing Burden per Entity per Response	Ongoing Burden Annualized per Entity per Response	Total Annual Burden per Entity	Total Industry Burden per Burden Type
Rule 19b-4(e) (Initial Response)	Reporting	24	1	0.5	0.5	0	0	0.5	12
Rule 19b-4(e) (Subsequent Response)	Reporting	24	97	0	0	1	97	33	2,331
							TOTAL HOURLY BURDEN FOR ALL RESPONDENTS		2,343

7. Rule 19b–4(j), Form 19b–4

Currently Approved Burden Estimate

The Commission's currently approved estimated response burden pursuant to Rule 19b–4 and Form 19b–4 for 46 respondents is an aggregate burden of 69,259 hours.[618]

Revision to Burden Estimate

The Commission estimates that, on average, the removal of the manual signature and retention requirement will not increase or decrease the burden hours associated with continuing to file Form 19b–4 electronically because the manual signature and retention requirement is only a small component of the filing requirement. Accordingly, the Commission estimates that the ongoing aggregate burden for SROs associated with complying with Rule 19b–4 and filing Form 19b–4 will continue to be 69,259 hours.[619]

Rule 19b-4(j), Form 19b-4 - Summary of Hourly Burdens						
Name of Information Collection	Type of Burden	Number of Entities Impacted	Annualized Initial Burden for Newly Registered Respondents	Annual Ongoing Burden for All Respondents	Annual Burden Averaged per Respondent	Total Industry Burden
Rule 19b-4(j), Form 19b-4	Reporting	46	165	68,294	1,065	69,259
					TOTAL HOURLY BURDEN FOR ALL RESPONDENTS	69,259

8. Rule 17a–22

Currently Approved Burden Estimate[620]

The Commission estimates that it receives, on average, approximately 840 filings per year pursuant to Rule 17a–22.[621] Although the frequency of filings made by registered clearing agencies pursuant to Rule 17a–22 varies, the Commission estimates that, on average, each registered clearing agency submits approximately 120 filings per year.[622] The Commission estimates that, on average, each filing requires approximately 0.25 hours (fifteen minutes).[623] This figure represents the time it takes for a staff person at a registered clearing agency to: (i) properly identify a document subject to the rule; (ii) print and make copies of the document; and (iii) mail the copies to the Commission and, where applicable, the ARA.[624] Accordingly, the Commission estimates that the aggregate annual burden to comply with Rule 17a–22 is 210 hours.[625] Further, the Commission estimates that each

[617] 0.5 burden hours per first response for structuring, rendering, and posting × 24 respondents) = 12 hours. 1 burden hour per response for structuring, rendering, and posting in subsequent years × 2,331 responses) = 2,331 hours. *See also infra* Section X.C.2.b, (discussing estimated cost ranges related to the structuring requirement for Rule 19b–4(e) information). Consistent with structured data burden estimates in prior Commission releases, the burden estimates here assume the custom XML structuring will be done by a programmer. *See supra* section IX.D.5.

[618] *See* FR Doc. 2023–01613, 88 FR 5387 (Jan. 27, 2023) (Request to OMB for extension of Rule 19b–4 and Form 19b–4; SEC File No. 270–38; OMB Control No. 3235–0045).

[619] *See id.* for an itemized discussion of specific one-time and ongoing hourly burdens for respondents.

[620] The Commission has previously discussed the requirements of Rule 17a–22 in section IX.A.8, *supra*.

[621] This figure is based on the number of aggregate filings received by the Commission in 2017, which was the last year for which the Commission had compiled data at the time of the Rule 17a–22 PRA update in 2020.

[622] *See* FR Doc. 2020–08336, 85 FR 21910 (Apr. 20, 2020) (Request to OMB for Extension of Rule 17a–22; SEC File No. 270–202; OMB Control No. 3235–0196). Given the variability in the number of filings per clearing agency received each year, the Commission estimated an average of 120 annual filings per clearing agency by averaging the approximate number of filings received in the most recent year for which the Commission has obtained data (840 filings) by the number of registered clearing agencies (7 clearing agencies).

[623] *See id.*

[624] Although current Rule 17a–22 requires duplicate filings when the Commission is not a registered clearing agency's ARA, the additional burden of making a duplicate filing is expected to be minimal because the rule applies only to materials that have already been published by the registered clearing agency.

[625] 7 registered clearing agencies × 120 responses per clearing agency × .25 hours = 210 burden hours.

registered clearing agency will expend a total of 30 hours per year to comply with Rule 17a–22.[626]

Revision to Burden Estimate

The Commission recognizes that the amendments to Rule 17a–22 impose certain burdens on respondents. Although the scope of supplemental materials subject to Rule 17a–22 would not change, respondents would be required to prominently post certain supplemental materials on their internet websites within two business days after issuing, or making generally available, such materials to their participants or other entities with whom they have a significant relationship. Currently, respondents must file with the Commission three paper copies of certain supplemental materials issued, or made generally available, to their participants or other entities with whom they have a significant relationship within 10 days after issuing, or making generally available, such materials. In addition, when the Commission is not a respondent's ARA, the respondent must file at the same time one paper copy of the materials with its ARA.

While there may be a marginal reduction in burden hours associated with replacing the paper filing requirement under Rule 17a–22 with an electronic filing requirement via a registered clearing agency's website, for purposes of making a PRA burden estimate, the current baseline is expected to represent a reasonable estimate of the burden hours associated with filing supplemental materials. The time required to compile and mail copies of supplemental materials is expected, on average, to be equivalent to the time required to post these materials on a clearing agency's website such that they would be readily identifiable and accessible on the website.[627] Moreover, reducing the timeframe under Rule 17a–22 from 10 days to 2 business days is not expected to increase the burden hours associated with compliance with Rule 17a–22. On average, filing supplemental materials electronically via a registered clearing agency's internet website is not expected to increase or decrease burden hours from the current baseline of 0.25 hours. Accordingly, each registered clearing agency is expected to continue to expend a total of 30 hours per year to comply with Rule 17a–22.[628] Thus, the aggregate annual burden associated with compliance with Rule 17a–22 is expected to continue to be 210 hours.[629]

9. Rules 17a–5, 18a–7, and 17a–12

a. Requirement To File Annual Reports on EDGAR Using Structured Data

Currently Approved Burden Estimate

Rules 17a–5, 17a–12, and 18a–7 require broker-dealers, OTC derivatives dealers, and SBS Entities that are not prudentially regulated, respectively, to file annual reports, including financial statements and supporting schedules that must be audited by a PCAOB-registered independent public accountant in accordance with PCAOB standards. Under Rule 17a–5, each broker-dealer is estimated to have an annual reporting burden of 12 hours, resulting in an annual industry burden of 38,616 hours.[630] Under Rule 17a–12, each OTC derivatives dealer is estimated to have an annual reporting burden of 100 hours, resulting in an annual industry burden of 200 hours.[631] Under Rule 18a–7, each SBSD is estimated to have an annual reporting burden of 17 hours, resulting in an annual industry burden of 136 hours.[632]

Revision to Burden Estimate

In the context of Nationally Recognized Statistical Rating Organizations (''NRSROs''), the Commission estimated that it would take an NRSRO, on average, sixteen hours on a one-time basis to become familiar with the EDGAR system.[633] This estimate would also apply to entities that are new filers on EDGAR under the amendments to Rules 17a–5, 18a–7, and 17a–12.

For the 12 months ended December 31, 2023, the Commission received 1,498 filings of the annual reports required by paragraph (d) of Rule 17a–5 in paper. Based on this estimate, the Commission estimates that approximately 1,498 broker-dealers that are required to file annual reports with the Commission will be new EDGAR filers. The broker-dealers that have filed annual reports on EDGAR have EDGAR access credentials and are familiar with the mechanics of filing on EDGAR. The Commission estimates the one time industry-wide burden for broker-dealers to acquire EDGAR access and familiarize themselves with EDGAR will be approximately 23,968 hours.[634] ANC broker-dealers must also file annual reports under the amendments to Rule 17a–5, so there would be no additional burden attributable to requiring the electronic filing on EDGAR of ANC broker-dealer supplemental reports under paragraph (k) of Rule 17a–5.

In addition, as stated above, the Commission estimates that 18 non-bank SBS Entities would be required to electronically file on EDGAR annual reports under paragraph (c) of Rule 18a–7, as amended. However, since these firms are already filing Form SBSE on EDGAR, the Commission does not estimate any burden for these firms to familiarize themselves with EDGAR.

The Commission estimates that the one-time burden for an OTC derivatives dealer to familiarize itself with EDGAR would be approximately 16 hours. However, because all three OTC derivatives dealers already voluntarily file their annual reports on EDGAR, the Commission estimates that the one-time industry-wide burden would be zero hours.

The current PRA burden for paragraph (d) of Rule 17a–5 includes an annual industry-wide cost of approximately $31,022 in postage costs to mail the annual reports to the Commission. Rule 17a–5 is being amended to require these reports to be filed electronically, so there should be no more postage costs associated with these requirements. Under the rule amendments, broker-dealers will no longer incur these costs.

Under the rule amendments, broker-dealers, OTC derivatives dealers, SBSDs, and MSBSPs filing their annual reports electronically must keep the original oath or affirmation for a period of not less than six years, the first two years in an easily accessible place. The requirement to keep the oath or affirmation should not materially increase a broker-dealer's recordkeeping burden.

[626] 840 total responses × .25 hours/7 active clearing agencies = 30 burden hours.

[627] *See* Section III.B.4. (explaining the Commission's interpretation of the requirement to ''prominently post'' supplemental materials on a clearing agency's website pursuant to the amendments to Rule 17a–22).

[628] 840 total responses × .25 hours/7 active clearing agencies = 30 burden hours.

[629] 7 registered clearing agencies × 120 responses per clearing agency × .25 hours = 210 burden hours.

[630] *See* Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–5 (June 7, 2023), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202304-3235-019*.

[631] *See* Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–12 (Jan. 11, 2022), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202110-3235-010*.

[632] *See* Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 18a–7 (Mar. 30, 2024), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202403-3235-002*. Each MSBSP is estimated to have an annual reporting burden of 10 hours; however, as of Dec. 31, 2023, there were no MSBSPs registered with the Commission.

[633] *See* Nationally Recognized Statistical Rating Organizations, Release No. 72936 (Aug. 27, 2014), 79 FR 55077, 55235–6 (Sept. 15, 2014).

[634] 1,498 broker-dealers × 16 hours = 23,968 hours.

Under the rule amendments, broker-dealers, OTC derivatives dealers, SBSDs, and MSBSPs are required to file their annual reports and related filings (including compliance reports, exemption reports, accountant's reports, and supplemental reports) in Inline XBRL. To file reports in Inline XBRL, a filer must purchase Inline XBRL tagging software to apply Inline XBRL tags to the reports before submitting them to EDGAR, or employ a tagging service provider to apply the Inline XBRL tags to the reports on its behalf. As described in further detail in the economic analysis and above, the burdens associated with tagging the annual reports and related filings in Inline XBRL will vary based on the size of the respondent and whether the respondent is affiliated with a public reporting company that is already subject to Inline XBRL requirements, and the initial implementation of Inline XBRL requirements entails additional burdens (*e.g.,* establishing new processes for the use of Inline XBRL tagging software) that do not apply on an ongoing basis.[635]

Compared to the proposing release, the Commission has increased the burden and cost estimates for Inline XBRL tagging of the annual reports and related filings for several reasons. First, the Commission estimated at proposal that all respondents affiliated with public reporting companies already subject to Inline XBRL requirements would incur reduced burdens and costs, because such respondents would be able to leverage the Inline XBRL compliance software licenses and/or service agreements, as well as the Inline XBRL tagging processes and experience, of those affiliates. One commenter stated that this burden and cost reduction is dependent on the contractual arrangements that firms have with third-party providers, and on the internal staffing structure for each company.[636] To account for this variation, the Commission is now estimating that only half of affiliated respondents will incur reduced burdens and costs.[637]

Second, the Commission estimated at proposal that respondents choosing to tag annual reports and related filings internally, rather than outsourcing the Inline XBRL tagging to a third-party service provider, would incur initial implementation burdens and costs in addition to ongoing Inline XBRL tagging burdens and costs. The Commission estimated at proposal that outsourcing respondents would not incur any initial implementation burdens. One commenter stated that structured data requirements will impose burdens associated with diligencing, negotiating with, and onboarding third parties.[638] The Commission agrees, and because these burdens apply to respondents that outsource Inline XBRL tagging to third-party service providers, the Commission has increased the number of respondents it estimates will incur initial structured data implementation burdens.

However, as discussed above in sections IV.A. and VII.A., the Commission disagrees that the structured data requirements under the rule amendments will obligate every filer or submitter to undergo multiple fundamental operational changes. Firms that outsource compliance with structured data requirements to a third-party service provider rather than comply with the structured data requirements in-house would not undergo these operational changes because the third-party service provider would take such actions as necessary. For the custom XML requirements, most firms will comply with those requirements by completing fillable web forms on EDGAR; other firms will have the requisite sophistication to encode disclosures using custom XML schemas without the need for substantial additional training or hiring of personnel.[639] Firms that comply with Inline XBRL structured data requirements internally will likely need to implement processes for their staff to apply Inline XBRL tags and validate such tags. The Commission includes these implementation and training costs in its estimates of initial structured data costs and burdens.

Third, the Commission's proposed structured data burden estimates did not include any additional burden for respondents complying with Rule 18a–7 under a substituted compliance order pursuant to Exchange Act Rule 3a71–6. One commenter stated that the Commission should allow firms relying on substituted compliance to continue submitting home-country reports in their current form, explaining that the organization and requirements of these reports is often different from U.S. reports.[640] On an ongoing basis, the Commission estimates that the Inline XBRL burdens for respondents relying on substituted compliance are equal to the Inline XBRL burdens for other respondents, because in each case, the respondent will need to apply Inline XBRL tags to disclosures in financial statements and supplemental filings that Rule 18a–7 requires, whether those disclosures are provided in the U.S. report or included within the corresponding home country report alongside other disclosures that only the home country regulator requires. However, the first time a respondent relying on substituted compliance (or its third-party tagging service provider) applies Inline XBRL tags to its home country report, it will incur the additional burden of determining which disclosures within its home country report are responsive to U.S. disclosure requirements and must therefore be tagged. To capture this additional step, the Commission is increasing the estimated initial Inline XBRL tagging burdens and costs from 50% in the proposing release, by an additional 25% for SBS Entities relying on substituted compliance.

On average, respondents are estimated to incur 7 burden hours and $1,600 in external cost for the first response to be tagged in Inline XBRL, and incur 4.5 burden hours and $1,000 in external cost to tag subsequent responses in Inline XBRL. Therefore, the Commission estimates the total initial industry-wide internal burden and external cost would be 22,869 hours and $5,227,200 for broker-dealers, 21 hours and $4,800 for OTC derivative dealers, and 126 hours and $28,800 for SBSDs and MSBSPs.[641] The Commission estimates the total ongoing annual industry-wide internal

[635] *See infra* sections X.C.2.b and IX.D.2. We have accounted for this expected variance in the calculations of average burden and cost figures presented in this section. Consistent with structured data burden estimates in prior Commission releases, the burden estimates here assume internal Inline XBRL tagging would be done by a compliance attorney. *See supra* section IX.D.5.

[636] *See* XBRL Letter at 11.

[637] As stated in the structured data cost section of the economic analysis, the Commission has identified 226 respondents affiliated with public reporting companies. *See infra* section X.C.2.b. The Commission is now estimating that only half, or 113, of those affiliated respondents will incur reduced Inline XBRL burdens.

[638] *See* SIFMA 5/22/2023 Letter at 4.

[639] *See infra* section X.C.2.b. As explained below in the Economic Analysis, firms that comply with XBRL requirements internally do not need to hire additional personnel that are proficient in XBRL because they can license software tools that allow staff without XBRL proficiency to apply Inline XBRL tags without needing to overhaul the firm's systems or operations.

[640] *See id.* at 7. Although the comment referred specifically to home-country equivalents to CCO reports, home-country equivalents to Rule 18a–7 annual reports and related filings can also vary from U.S. reports in their organization and requirements.

[641] 3,267 broker-dealers × 7 hours = 22,869 hours; 3,267 broker-dealers × $1,600 = $5,227,200. 3 OTC derivative dealers × 7 hours = 21 hours; 3 OTC derivative dealers × $1,600 = $4,800. 18 SBSDs and MSBSPs × 7 hours = 126 hours; 18 SBSDs and MSBSPs × $1,600 = $28,800. These estimates include SBSDs and MSBSPs that rely on substituted compliance pursuant to a Commission order with respect to reporting obligations under Rule 18a–7(c).

burden and external cost would be 14,702 hours and $3,267,000 for broker-dealers, 14 hours and $3,600 for OTC derivative dealers, and 81 hours and $18,000 for SBSDs and MSBSPs.[642]

b. Amendments Relating to the FOCUS Report

Currently Approved Burden Estimate

Rules 17a–5, 17a–12, and 18a–7 require broker-dealers, OTC derivatives dealers, and SBS Entities, respectively, to file unaudited financial information on the FOCUS Report (Form X–17A–5 Part II, IIA, or IIC) on a monthly or quarterly basis.[643] Under Rule 17a–5, each broker-dealer is estimated to have an annual reporting burden of 12 hours, resulting in an annual industry burden of 38,616 hours.[644] Under Rule 17a–12, each OTC derivatives dealer is estimated to have an annual reporting burden of 80 hours, resulting in an annual industry burden of 160 hours.[645] Under Rule 18a–7, each SBSD that is not prudentially regulated is estimated to have an annual reporting burden of 192 hours, resulting in an annual industry burden of 1,536 hours, and each SBSD that is prudentially regulated is estimated to have an annual reporting burden of 16 hours, resulting in an annual industry burden of 464 hours.[646]

Revision to Burden Estimate

The Commission is making a number of amendments to the FOCUS Report. First, it is making corrective and clarifying amendments to FOCUS Report Part II. The Commission estimates that the amendments will result in an initial burden of five hours on each Part II filer so firms can familiarize themselves with the amendments to FOCUS Report Part II. These amendments will generally either have no impact on or reduce the ongoing burden on the vast majority of filers because they will generally reduce questions about where and how to report items on the form. However, because the amendments require stand-alone swap dealers and stand-alone introducing brokers to complete a new section of FOCUS Report Part II that these types of firms were not previously required to complete (*i.e.,* Computation of CFTC Minimum Capital Requirements), the Commission estimates that the amendments would result in an ongoing annual burden of 1 hour per stand-alone swap dealer or stand-alone introducing broker.

The Commission estimates that there are 466 broker-dealers filing FOCUS Report Part II under Rule 17a–5, resulting in an estimated industry-wide initial burden of 2,375 hours.[647] The Commission estimates that there are three OTC derivatives dealers filing FOCUS Report Part II under Rule 17a–12, resulting in an estimated industry-wide initial burden of 15 hours.[648] The Commission estimates that there are 18 non-broker-dealer SBS Entities filing FOCUS Report Part II under Rule 18a–7, resulting in an estimated industry-wide initial burden of 90 hours.[649] The Commission estimates that for Part II filers that are not stand-alone swap dealers, the amendments generally will not change the estimated ongoing burden imposed by FOCUS Report Part II, as amended. The Commission estimates that there are 4 domestic stand-alone swap dealers and 67 domestic stand-alone introducing brokers filing FOCUS Report Part II under Rule 17a–5, resulting in an estimated industry-wide ongoing burden of 71 hours per year.[650]

Second, the Commission is aligning the text in FOCUS Report Part IIC with the text in FFIEC Form 031, including additional amendments to FOCUS Report Part IIC to match additional changes made to FFIEC Form 031 since the date of the Proposing Release. These amendments are expected to result in an initial burden of five hours on each bank SBS Entity so that firms can compare the revised FOCUS Report Part IIC with FFIEC Form 031. However, these amendments are expected to generally either have no impact on or reduce the ongoing burden on bank SBS Entities because they will generally reduce questions about how to complete FOCUS Report Part IIC consistently with FFIEC Form 031. The Commission estimates that there are 30 bank SBS Entities filing FOCUS Report Part IIC, resulting in an estimated industry-wide initial burden of 150 hours.[651] The Commission estimates that the amendments will not change the estimated ongoing annual burden imposed by FOCUS Report Part IIC.

Third, the Commission is requiring only the CEO or CFO's signature lines to be signed on the FOCUS Report's cover page, and allows these signatures to be signed either manually or electronically. This amendment is expected to result in an initial burden of 1 hour on each filer so that the firm can review the standards for an electronic signature on the FOCUS Report Part II, IIA, or IIC, as applicable. However, this amendment is expected to generally either have no impact on or reduce the ongoing burden on FOCUS Report filers, because they will not be required to furnish as many signatures as before the amendment, and it may be easier to prepare electronic signatures rather than manual signatures since firms will already be familiar with the process and can easily obtain these signatures while working remotely. The Commission estimates that there are 3,463 broker-dealers, non-broker-dealer SBS Entities, and bank SBS Entities filing FOCUS Report Parts II, IIA, or IIC, resulting in an estimated industry-wide initial burden of 3,463 hours.[652] The Commission estimates that the amendments will not change the estimated ongoing annual burden imposed by FOCUS Report Parts II, IIA, and IIC, as amended.

Fourth, the Commission is making two technical amendments to FOCUS Report Part IIA.[653] The Commission

[642] 3,267 broker-dealers × 4.5 hours = 14,701.5 hours; 3,267 broker-dealers × $1,000 = $3,267,000. 3 OTC derivative dealers × 4.5 hours = 13.5 hours; 3 OTC derivative dealers × $1,000 = $3,000. 18 SBSDs and MSBSPs × 4.5 hours = 81 hours; 18 SBSDs and MSBSPs × $1,000 = $18,000.

[643] *See* 17 CFR 240.17a–5; 17 CFR 240.17a–12; 17 CFR 240.18a–7.

[644] *See* Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–5 (June 7, 2023), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202304-3235-019.*

[645] *See* Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–12 (Jan. 11, 2022), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202110-3235-010.*

[646] *See* Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 18a–7 (Mar. 30, 2024), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202403-3235-002.*

[647] 5 hours × 466 Part II filers under Rule 17a–5 = 2,330 hours. These internal hours likely will be performed by a compliance manager.

[648] 5 hours × 3 Part II filers under Rule 17a–12 = 15 hours. These internal hours likely will be performed by a compliance manager.

[649] 5 hours × 18 Part II filers under Rule 18a–7 = 90 hours. These internal hours likely will be performed by a compliance manager.

[650] 1 hour × 71 Part II filers that are domestic stand-alone swap dealers or stand-alone introducing brokers = 71 hours. These internal hours likely will be performed by a compliance manager. This burden estimate may be duplicative since the CFTC estimates that swap dealers and introducing brokers elect to file the CFTC's Form 1–FR instead of electing to file the SEC's FOCUS Report. *See* Supporting Statement for Revised Information Collections—OMB Control Number 3038–0024 (Jan. 16, 2024), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202401-3038-001.*

[651] 5 hours × 30 Part IIC filers = 150 hours. These internal hours likely will be performed by a compliance manager.

[652] 1 hour × 3,412 Part II or Part IIA filers under Rule 17a–5 = 3,412 hours. 1 hour × 48 Part II or Part IIC filers under Rule 18a–7 = 48 hours. 1 hour × 3 Part II filers under Rule 17a–12 = 3 hours. These internal hours likely will be performed by a compliance manager.

[653] Lines 11 and 15 of the Computation of Net Capital Requirement are being updated to replace the incorrect cross-reference to line 19 with a corrected cross-reference to line 18. In addition, the Commission is amending FOCUS Report Part IIA to require broker-dealers using the alternative method

estimates that the amendments will result in an initial burden of five hours on each Part IIA filer so firms can familiarize themselves with the amendments. These amendments will generally either have no impact on or reduce the ongoing burden on the vast majority of filers because they align FOCUS Report Part IIA with the requirements of Rule 15c3–1 and will reduce questions about how to complete FOCUS Report Part IIA consistently with Rule 15c3–1. The Commission estimates that there are 2,946 FOCUS Report Part IIA filers, resulting in an estimated industry-wide initial burden of 14,730 hours.[654]

Finally, the Commission is requiring OTC derivatives dealers to file the FOCUS Report electronically on the SEC eFOCUS system instead of in paper. The Commission estimates that this amendment will result in an initial burden of 15 hours on each OTC derivatives dealer so that the firm can familiarize itself with the SEC eFOCUS system. However, this amendment is expected to generally either have no impact on or reduce the ongoing burden on OTC derivatives dealers, because filing the FOCUS Report electronically is an automated process as compared to filing by paper. Therefore, the Commission estimates that there are 3 OTC derivatives dealers, resulting in an estimated industry-wide initial burden of 45 hours.[655] The Commission estimates that the amendment will not change the estimated ongoing annual burden imposed by Rule 17a–12.

c. Notarization of Annual Reports

The Commission is amending Part III of Form X–17A–5 (*i.e.,* the annual audit's cover page) to remove the signature line for the notary public. The current supporting statements for Rules 17a–5, 17a–12, and 18a–7 do not attribute a specified portion of the burden to the notarization requirement. The Commission estimates that the amendment will result in an initial burden of five hours on each firm required to file annual reports and related annual filings under Rules 17a–5, 17a–12, and 18a–7, so firms can familiarize themselves with the change. The Commission estimates that there are 3,288 broker-dealers, SBS Entities and OTC derivatives dealers filing annual reports, resulting in an estimated industry-wide initial burden of 16,440 hours.[656] This amendment will generally either have no impact on or reduce the ongoing burden on the filers because they will no longer need to obtain notarization of the annual reports.

The estimated hourly burdens and dollar costs associated with the amendments to Rules 17a–5, 18a–7, and 17a–12 are summarized in the below tables:

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Rule 17a-5 - Summary of Hourly Burdens

Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Burden per Entity per Response	Initial Burden Annualized per Entity per Response	Ongoing Burden per Entity per Response	Annual Burden Per Entity per Response	Total Annual Burden Per Entity	Total Industry Burden
Filing annual audit on EDGAR – Initial burden	Reporting	1,498	1	16.00	5.33	0.00	0.00	5.33	7,989.33
Filing annual audit in Inline XBRL – Initial burden	Reporting	3,267	1	7.00	2.33	0.00	2.33	2.33	7,623.00
Filing annual audit in Inline XBRL – Ongoing burden	Reporting	3,267	1	0.00	0.00	4.50	4.50	4.50	14,701.50
Corrective and clarifying amendments to FOCUS Report Part II – Initial burden	Reporting	466	1	5.00	1.67	0.00	1.67	1.67	776.67
Corrective and clarifying amendments to FOCUS Report Part IIA – Initial burden	Reporting	2,946	1	5.00	1.67	0.00	1.67	1.67	4,910.00

to compute net capital to report the percentage of debt to debt-equity total.

[654] 5 hours × 2,946 Part IIA filers = 14,730 hours. These internal hours likely will be performed by a compliance manager.

[655] 15 hours × 3 OTC derivatives dealers = 45 hours. These internal hours likely will be performed by a compliance manager.

[656] 3,267 broker-dealers filing under Rule 17a–5 × 5 hours = 16,335 hours. 18 non-broker-dealer SBS Entities filing under Rule 18a–7 × 5 hours = 90 hours. 3 OTC derivatives dealers filing under Rule 17a–12 × 5 hours = 15 hours. These internal hours likely will be performed by a compliance manager.

Rule 17a-5 - Summary of Hourly Burdens									
Name of Information Collection	**Type of Burden**	**Number of Entities Impacted**	**Annual Responses per Entity**	**Initial Burden per Entity per Response**	**Initial Burden Annualized per Entity per Response**	**Ongoing Burden per Entity per Response**	**Annual Burden Per Entity per Response**	**Total Annual Burden Per Entity**	**Total Industry Burden**
Amendments to FOCUS Report signature requirement – Initial burden	Reporting	3,412	1	1.00	0.33	0.00	0.33	0.33	1,137.33
Amendments to CFTC capital computation section of FOCUS Report Part II – Ongoing burden	Reporting	71	4	0.00	0.00	0.25	0.25	1.00	71.00
Removal of oath or affirmation notarization requirement – Initial burden	Reporting	3,267	1	5.00	1.67	0.00	1.67	1.67	5,445.00
							TOTAL HOURLY BURDEN FOR ALL RESPONDENTS		**42,653.83**

Rule 17a-5 - Summary of Dollar Costs									
Name of Information Collection	**Type of Burden**	**Number of Entities Impacted**	**Annual Responses per Entity**	**Initial Cost per Entity per Response**	**Initial Cost Annualized per Entity per Response**	**Ongoing Cost per Entity per Response**	**Annual Cost Per Entity per Response**	**Total Annual Cost Per Entity**	**Total Industry Cost**
Filing annual audit in Inline XBRL – Initial burden	Reporting	3,267	1	$1,600.00	$533.33	$0.00	$$533.33	$533.33	$1,742,400.00
Filing annual audit in Inline XBRL – Ongoing burden	Reporting	3,267	1	$0.00	$0.00	$1,000.00	$1,000.00	$1,000.00	$3,267,000.00
							TOTAL COST FOR ALL RESPONDENTS		**$5,009,400.00**

Rule 18a-7 - Summary of Hourly Burdens									
Name of Information Collection	**Type of Burden**	**Number of Entities Impacted**	**Annual Responses per Entity**	**Initial Burden per Entity per Response**	**Initial Burden Annualized per Entity per Response**	**Ongoing Burden per Entity per Response**	**Annual Burden Per Entity per Response**	**Total Annual Burden Per Entity**	**Total Industry Burden**
Filing annual audit on EDGAR – Initial burden	Reporting	0	1	16.00	5.33	0.00	5.33	5.33	0.00
Filing annual audit in Inline XBRL – Initial burden	Reporting	18	1	7.00	2.33	0.00	2.33	2.33	42.00
Filing annual audit in Inline XBRL – Ongoing burden	Reporting	18	1	0.00	0.00	4.50	4.50	4.50	81.00
Corrective and clarifying amendments to FOCUS Report Part II – Initial burden	Reporting	18	1	5.00	1.67	0.00	1.67	1.67	30.00
Aligning FOCUS Report Part IIC with FFIEC Form 031 – Initial burden	Reporting	30	1	5.00	1.67	0.00	0.00	1.67	50.00
Amendments to FOCUS Report signature requirement – Initial burden	Reporting	48	1	1.00	0.33	0.00	0.33	0.33	16.00
Removal of oath or affirmation notarization requirement – Initial burden	Reporting	18	1	5.00	1.67	0.00	1.67	1.67	30.00
							TOTAL HOURLY BURDEN FOR ALL RESPONDENTS		**249.00**

Rule 18a-7 - Summary of Dollar Costs									
Name of Information Collection	**Type of Burden**	**Number of Entities Impacted**	**Annual Responses per Entity**	**Initial Cost per Entity per Response**	**Initial Cost Annualized per Entity per Response**	**Ongoing Cost per Entity per Response**	**Annual Cost Per Entity per Response**	**Total Annual Cost Per Entity**	**Total Industry Cost**

Filing annual audit in Inline XBRL – Initial burden	Reporting	18	1	$1,600.00	$533.33	$0.00	$533.33	$533.33	$9,600.00
Filing annual audit in Inline XBRL – Ongoing burden	Reporting	18	1	$0.00	$0.00	$1,000.00	$1,000.00	$1,000.00	$18,000.00
								TOTAL COST FOR ALL RESPONDENTS	$27,600.00

Rule 17a-12 - Summary of Hourly Burdens									
Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Burden per Entity per Response	Initial Burden Annualized per Entity per Response	Ongoing Burden per Entity per Response	Annual Burden Per Entity per Response	Total Annual Burden Per Entity	Total Industry Burden
Filing annual audit on EDGAR – Initial burden	Reporting	0	1	16.00	5.33	0.00	5.33	5.33	0.00
Filing annual audit in Inline XBRL – Initial burden	Reporting	3	1	7.00	2.33	0.00	2.33	2.33	7.00
Filing annual audit in Inline XBRL – Ongoing burden	Reporting	3	1	0.00	0.00	4.50	4.50	4.50	13.50
Corrective and clarifying amendments to FOCUS Report Part II – Initial burden	Reporting	3	1	5.00	1.67	0.00	1.67	1.67	5.00
Amendments to FOCUS Report signature requirement – Initial burden	Reporting	3	1	1.00	0.33	0.00	0.33	0.33	1.00
Filing FOCUS Report on SEC eFOCUS – Initial burden	Reporting	3	1	15.00	5.00	0.00	5.00	5.00	15.00
Removal of oath or affirmation notarization requirement – Initial burden	Reporting	3	1	5.00	1.67	0.00	1.67	1.67	5.00
								TOTAL HOURLY BURDEN FOR ALL RESPONDENTS	46.50

Rule 17a-12 - Summary of Dollar Costs									
Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Cost per Entity per Response	Initial Cost Annualized per Entity per Response	Ongoing Cost per Entity per Response	Annual Cost Per Entity per Response	Total Annual Cost Per Entity	Total Industry Cost
Filing annual audit in Inline XBRL – Initial burden	Reporting	3	1	$1,600.00	$533.33	$0.00	$533.33	$533.33	$1,600.00
Filing annual audit in Inline XBRL – Ongoing burden	Reporting	3	1	$0.00	$0.00	$1,000.00	$1,000.00	$1,000.00	$3,000.00
								TOTAL COST FOR ALL RESPONDENTS	$4,600.00

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10. Rule 17h–2T

The current supporting statement for Rule 17h–2T does not identify a burden for sending the risk assessment reports to the Commission. As broker-dealers that are required to file reports under Rule 17h–2T are also required to file annual reports under Rule 17a–5,[657] the Commission is not estimating an additional burden for becoming familiar with the EDGAR system and for monitoring changes in EDGAR filing requirements attributable to the amendments to Rule 17h–2T.

Under the rule amendments, broker-dealers that are required to file reports under Rule 17h–2T will be required to tag the financial statements included with the report in Inline XBRL. Because these broker-dealers are also required to tag annual reports under Rule 17a–5 in Inline XBRL, the Inline XBRL requirement for reports under Rule 17h–2T would represent additional (quarterly) iterations of that compliance process, as abbreviated to reflect that Form 17–H requires only financial statements (and not any supplemental reports or other related filings) to be tagged in Inline XBRL, and that Form 17–H filers may omit the statement of cash flows and the footnotes to the financial statements. Thus, the Commission estimates an average additional burden of 2 hours per response and a total industrywide burden of 1,928 hours per year for Form 17–H filers to structure their financial statements in Inline XBRL.[658]

[657] *See supra* section IX.D.9.

[658] 2 hours per response × 4 responses per year × 241 respondents (as of Dec. 31, 2023) = 1,928 hours. Rule 17h–2T requires fourth quarter financial statements in addition to cumulative

Continued

Summary of Hourly Burdens									
Name of Information Collection	**Type of Burden**	**Number of Entities Impacted**	**Annual Responses per Entity**	**Initial Burden per Entity per Response**	**Initial Burden Annualized per Entity per Response**	**Ongoing Burden per Entity per Response**	**Annual Burden Per Entity per Response**	**Total Annual Burden Per Entity**	**Total Industry Burden**
Require filing Form 17-H in Inline XBRL – Ongoing Burden	Reporting	241	4	0.00	0.00	2.00	2.00	8.00	1,928.00
TOTAL HOURLY BURDEN FOR ALL RESPONDENTS									**1,928.00**

11. Rule 17a–19 and Form X–17A–19

Currently Approved Burden Estimate

Rule 17a–19 requires every national securities exchange and registered national securities association to file a Form X–17A–19 with the Commission and SIPC within five business days of the initiation, suspension, or termination of any member. The Commission currently estimates that Form X–17A–19 would take 0.25 hours to prepare, resulting in an annual industry-wide burden of 105 hours.[659]

Revision to Burden Estimate

The 25 respondents who file Form X–17A–19 would need to familiarize themselves with the EDGAR system. As stated above with respect to Rule 17a–5, 17a–12, and 18a–7, the Commission estimates the one-time reporting burden of becoming familiar with the EDGAR system is approximately 16 hours.[660] Accordingly, the Commission estimates that the one-time industry-wide reporting burden would be approximately 400 hours.[661]

Summary of Hourly Burdens									
Name of Information Collection	**Type of Burden**	**Number of Entities Impacted**	**Annual Responses per Entity**	**Initial Burden per Entity per Response**	**Initial Burden Annualized per Entity per Response**	**Ongoing Burden per Entity per Response**	**Annual Burden Per Entity per Response**	**Total Annual Burden Per Entity**	**Total Industry Burden**
Filing Form X-17A-19 in EDGAR – Initial Burden	Reporting	25	1	16	5.33	0	5.33	5.33	133.25
TOTAL COST FOR ALL RESPONDENTS									**133.25**

12. Rule 3a71–3(d)(1)(vi)

Currently Approved Burden Estimate

Currently, Rule 3a71–3(d)(1)(vi) requires the Registered Entity to file the ANE Exception Notice by submitting it to the electronic mailbox specified on the Commission's website. When the Commission originally adopted the ANE Exception Notice requirement, it estimated that each Registered Entity would file one ANE Exception Notice with the Commission and that it would take 30 minutes to file each ANE Exception Notice, resulting in an industry-wide initial one-time burden of 12 hours.[662]

Revision to Burden Estimate

The Commission does not expect that changing the manner of filing the ANE Exception Notice from an email filing to an EDGAR filing will change this estimated one-time burden. The ability to withdraw an ANE Exception Notice via EDGAR as adopted in this release will result in an additional one-time

annual financial statements. *See* 17 CFR 240.17h–1. The Commission has not added burden hours associated with the custom XML requirements for the facing page and Part II of Form 17–H, because those requirements are currently in effect for Form 17–Hs that are filed on EDGAR, and nearly all Form 17–H filers (99% as of Dec. 31, 2023) file Form 17–H on EDGAR. *See infra* section X.C.2.b for further detail on structured data compliance costs, including estimated cost ranges and factors underlying expected variance in structured data costs across different filers. For example, as we discuss in that section, we expect some Form 17–H filers are larger broker-dealers affiliated with public companies that are also subject to Inline XBRL requirements for Form X–17A–5 Part III, which requires Inline XBRL tagging of annual financial statements. These larger broker-dealers will incur lower structured data costs than other Form 17–H filers. We have accounted for this expected variance in the calculation of average burden figures presented in this section. The estimated burdens here are higher than at proposal because, as the Commission explains in section X.C.2.b, the Commission now estimates that only half of respondents affiliated with public companies (here, 40 out of 81 affiliated Form 17–H filers) will experience a reduced XBRL tagging burden. Consistent with structured data burden estimates in prior Commission releases, the burden estimates here assume Inline XBRL tagging would be done by a compliance attorney. *See supra* section IX.D.5.

[659] *See* Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17A–19 and Form X–17A–19 (July 25, 2023), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202307-3235-021.*

[660] *See supra* section IX.D.9.a.

[661] 16 hours × 25 respondents = 400 hours. The Commission assumes all respondents would use fillable web forms on EDGAR to input their Form X–17A–19 disclosures (which EDGAR would subsequently convert into a custom XML data language). This estimate reflects time for respondents to familiarize themselves with the forms and does not include any added burden hours associated with the custom XML requirement for Form X–17A–19.

[662] *See* Cross-Border Adopting Release, 85 FR at 6340–41. *See also* Supporting Statement for the Paperwork Reduction Act Information Collection Submission for the Rule 3a71–3 Security-Based Swap Dealer De Minimis Counting Exception for Certain Transactions Arranged, Negotiated or Executed in the United States (Jan. 7, 2020) note 23 and accompanying text and section 15.d, *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201912-3235-011.*

burden. The Commission estimates that withdrawing an ANE Exception Notice electronically on EDGAR will incur the same burden as filing the initial ANE Exception Notice electronically on EDGAR. If each Registered Entity files one withdrawal of its ANE Exception Notice, the Commission estimates that would result in an industry-wide initial one-time burden of 12 hours.[663]

Summary of Hourly Burdens									
Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Burden per Entity per Response	Initial Burden Annualized[1] per Entity per Response	Ongoing Burden per Entity per Response	Annual Burden Per Entity per Response[2]	Total Annual Burden Per Entity	Total Industry Burden[3]
Withdrawal of notice of ANE Exception Notice, 3a71-3(d)(1)(vi)) Ongoing Burden	Reporting	24	1	0.50	0.17	0.00	0.17	0.17	12
TOTAL CHANGE IN BURDEN FOR ALL RESPONDENTS									12.00

[1] This column reflects the one-time burden estimates annualized over a three-year period (0.50 hours ÷ 3 years = 0.17 hours/year).

[2] 0.17 hours/year × 1 response/yr = 0.17 hours.

[3] 0.50 hours/response × 24 entities = 12 hours.

13. Rule 15fi–3(c)

Currently Approved Burden Estimate

When the Commission originally adopted Rule 15fi–3, it expected there to be only a minimal, if any, initial burden of designing a system for submitting VDNs.[664] The Commission also believed that the associated ongoing hourly burden of preparing and submitting VDNs would be minimal.[665] The Commission stated that, until SBS Entities were registered with the Commission, it was difficult for the Commission to determine the typical number of valuation disputes meeting the applicable thresholds that SBS Entities would be required to submit on an annual basis.[666] The Commission had estimated that each SBS Entity will spend an average of 24 hours each year complying with the requirement to prepare and submit VDNs, for an estimated average annual burden of 1,320 hours in the aggregate for all 55 SBS Entities.[667]

Revision to Burden Estimate

The amendments to Rule 15fi–3 related to EDGAR submission do not have an impact on the burdens associated with the existing collection of information. In particular, prior to the amendments, Rule 15fi–3(c) required SBS Entities to submit security-based swap VDNs to the Commission ''in a form and manner acceptable to the Commission,'' and staff made available to SBS Entities two options for submitting VDNs which includes either: (1) an electronic submission using EDGAR or (2) submission to a dedicated Commission email address. The Commission is amending Rule 15fi–3(c) to affirmatively require SBS Entities to submit VDNs to the Commission electronically in EDGAR in a custom XML data language.

SBS Entities will already have access to EDGAR by virtue of using the system to submit their applications for registration on either Forms SBSE, SBSE–A, or SBSE–BD, and to submit their certification for registration on Form SBSE–C. As a result, SBS Entities would not incur any additional burden associated with obtaining access to EDGAR for purposes of submitting VDNs given that all such filers should already have an active CIK. With respect to the custom XML structuring requirement for VDNs, SBS Entities would be able to comply by inputting their disclosures into a fillable web form on EDGAR rather than structuring their disclosures in custom XML themselves. As a result, SBS Entities would not incur any additional burden associated with the custom XML structuring requirement for VDNs.[668] The Commission is, however, revising the total burden estimate based on the three additional applications for registration as an SBSD it received since issuing the Proposing Release. Based on its estimate that each SBS Entity will spend an average of 30 hours[669] each year complying with the Rule 15fi–3(c) requirement, the Commission estimates an average annual burden of 90 hours in the aggregate for three additional SBS Entities. Accordingly, the Commission estimates an average annual burden of 1,740 hours in the aggregate for 58 SBS Entities.

[663] 24 Registered Entities × ½ hour = 12 hours.

[664] *See* Risk Mitigation Adopting Release, 85 FR at 6385.

[665] *Id.* at 6385–86.

[666] *Id.*

[667] This 1,320-hour annual burden reflects the currently approved information collection burden estimate for Rule 15fi–3(c); *see* Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rules 15Fi–3 through 15Fi–5—Risk Mitigation Techniques for Uncleared Security-Based Swaps (Aug. 18, 2021), *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202108-3235-011*. Additionally, when the Commission adopted Rule 15fi–3(c) it stated that, although it believed that the time required to submit amendments to existing notices is likely included in the 24 hour estimate, it was ''conservatively increasing that estimate by 25% to account for the submission of amended notices. As such, [the Commission estimated that] SBS Entities will spend on average of 30 hours each year complying with this requirement, for an estimated average annual burden of 1,650 hours in the aggregate for all 55 respondents.'' *See* Risk Mitigation Adopting Release, 85 FR at 6386.

[668] *See infra* section X.C.2.b. SBS Entities relying on substituted compliance pursuant to a Commission order with respect to the requirements of Rule 15fi–3 would also be able to comply by inputting their dispute reports into the fillable web form on EDGAR rather than structuring those reports in the custom XML themselves. *See supra* section V.C.2.

[669] *See supra* note 676.

Summary of Hourly Burdens				
Name of Information Collection	**Type of Burden**	**Number of Entities Impacted**	**Total Annual Burden Per Entity**	**Total Industry Burden**
Valuation Dispute Notices (including amendments)	Reporting	3	30	90
			TOTAL CHANGE IN HOURLY BURDEN	**90.00**

14. Rule 15fk–1(c)(2)(ii)(A)

Currently Approved Burden Estimate

Under current Rule 15fk–1(c), the CCO of a SBS Entity is required to prepare and submit a CCO report to the Commission. The Commission previously estimated that these reports would require on average 93 hours per respondent per year for an ongoing annual burden of 5,115 hours.[670]

Revision to Burden Estimate

The Commission recognizes that the amendments to Rule 15fk–1(c) may potentially impose certain burdens on respondents. Although the information to be included in the CCO report pursuant to Rule 15fk–1(c) would not change, the amendment requires respondents to submit the CCO report electronically with the Commission through EDGAR in Inline XBRL.

The Commission estimates that no SBS Entities would be first-time EDGAR users needing to obtain EDGAR access credentials. Thus, the internal time burden associated with completing a Form ID application to gain access to EDGAR would not apply to SBS Entities.[671]

SBS Entities would incur a burden to submit the CCO report in Inline XBRL. Because the CCO reports consist of a limited number of textual narrative sections (compared to the various sets of numerical values that comprise financial statements, which take significantly longer to tag), the Commission estimates that, on average, an SBS Entity would spend 5 internal burden hours and $1,500 in external costs (*e.g.,* the cost to license and renew Inline XBRL compliance software and/or services) to tag its CCO report in Inline XBRL in the initial year of compliance, and 3 internal burden hours and $500 in external costs in subsequent years.[672]

The Commission has increased the burden and cost estimates for Inline XBRL tagging of CCO reports compared to the proposing release for two reasons. First, as discussed in an earlier section, the Commission estimated at proposal that all respondents affiliated with public reporting companies already subject to Inline XBRL requirements would incur reduced burdens and costs, because such respondents would be able to leverage the Inline XBRL compliance software licenses and/or service agreements, as well as the Inline XBRL tagging processes and experience, of those affiliates.[673] One commenter stated that this burden and cost reduction is dependent on the contractual arrangements that firms have with third-party providers, and on the internal staffing structure for each company.[674] To account for this variation, the Commission is now estimating that only half of affiliated respondents (*i.e.,* 21 out of the 43 affiliated SBS Entities) will experience reduced burdens and costs.

Second, the Commission's proposed structured data burden and cost estimates did not differentiate between SBS Entities relying on substituted compliance orders with respect to the requirements of Rule 15fk–1 and other SBS Entities. One commenter, in recommending the Commission allow firms relying on substituted compliance to continue submitting home-country reports in their current form, stated that the organization and requirements of these reports is often different from U.S. reports.[675] The Commission estimates on an ongoing basis, the Inline XBRL tagging burdens and costs incurred by SBS Entities relying on substituted compliance will be equal to those incurred by other SBS Entities, because in each case, the SBS Entity will need to apply Inline XBRL tags to the narrative descriptions addressed in Exchange Act Rule 15fk–1(c)(2)(i), whether those narrative descriptions are provided in a report required by Rule 15fk–1(c) or included within the home country report required to be provided to the Commission by a substituted compliance order. However, the first time an SBS Entity relying on substituted compliance (or its third-party tagging service provider) applies Inline XBRL tags to its home country report, it will incur the additional burden of determining which narrative descriptions within its home country report correspond to the descriptions addressed in Exchange Act Rule 15fk–1(c)(2)(i) and must therefore be tagged. To capture this additional step, the Commission is increasing the estimated initial Inline XBRL tagging burdens and costs compared to the proposing release.

Accordingly, the Commission estimates that the total burden associated with compliance with Rule 15fk–1(c) would be an annual hour burden of 98 hours per respondent in the initial year (up from 94.5 hours) and 96 hours per respondent in subsequent years (up from 94 hours), and an annual cost burden of $1,500 per respondent in the initial year (up from $600) and $500 per respondent in subsequent years (up from $400), yielding an industry-wide annual burden of 5,194 hours and $79,500 in the first year and 5,088 hours and $26,500 in subsequent years.[676]

[670] *See* Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30096 (May 13, 2016) (''Business Conduct Release'').

[671] *See supra* section IX.D.1.

[672] This is also the case with respect to any SBS Entities relying on substituted compliance pursuant to a Commission order with respect to the requirements of Exchange Act section 15F(k) and Rule 15fk–1 because in each case, the SBS Entity will incur the cost of applying Inline XBRL tags to the information addressed in Rule 15fk–1(c)(2)(i) (whether that information is provided in a report required by Rule 15fk–1(c) or included within the home country report required to be provided to the Commission by a substituted compliance order). *See infra* section X.C.2.b for further detail on structured data compliance costs, including estimated cost ranges and factors underlying expected variance in structured data costs across different filers. We have accounted for this expected variance in the calculations of average burden and cost figures presented in this section. Consistent with structured data burden estimates in prior Commission releases, the burden estimates here assume Inline XBRL tagging would be done by a compliance attorney. *See supra* section IX.D.5.

[673] *See supra* section IX.D.9.a.

[674] *See* XBRL Letter at 11.

[675] *See* SIFMA 5/22/2023 letter at 7.

[676] The annual aggregate burden hour estimate for the initial year of compliance is based on the following calculation: (93 hours + 5 hours) × (53 SBS Entities) = 5,194 hours. The annual aggregate burden hour estimate for the subsequent years of compliance is based on the following calculation: (93 hours + 3 hours) × (53 SBS Entities) = 5,088 hours. The annual aggregate external cost estimate for the initial year of compliance is based on the following calculation: $1,500 × (53 SBS Entities) = $79,500. The annual aggregate external cost

E. Collection of Information Is Mandatory

All collections of information pursuant to the rules are mandatory, or mandatory except to the extent an exception is available.

F. Confidentiality of Responses to Collection of Information

For all Covered SRO Forms, no assurance of confidentiality is given by the Commission with respect to responses made on such forms. While Rule 24b–2 allows entities to seek confidential treatment, the Commission expects that all information will be public and that confidential treatment will not be available. Any person may make written objection to the public disclosure of any information contained in such forms in accordance with the procedures set forth in Rule 24b–2(b).[677]

The information collected pursuant to Rule 3a71–3(d)(1)(vi) is public information to assist Relying Entities and their affiliates in determining whether they have satisfied the ANE Exception's notice requirement and in monitoring their progress toward the ANE Exception's cap on inter-dealer security-based swaps. The amendment to Rule 3a71–3(d)(1)(vi) provides that notices and withdrawals shall be publicly disseminated through the Commission's EDGAR system. Because reliance on the ANE Exception which requires filing of an ANE Exception Notice is voluntary, the Commission does not expect that a Registered Entity seeking to facilitate the exception would include information that could not be publicly disclosed in the notices or withdrawals required by the amendment to Rule 3a71–3(d)(1)(vi) or would object to the public disclosure of information contained in such notices or withdrawals.

Rule 15fi–3(c) requires an SBS Entity to promptly notify the Commission and any applicable prudential regulator of any security-based swap valuation dispute in excess of $20,000,000 (or its equivalent in any other currency) if not resolved within: (1) three business days, if the dispute is with a counterparty that is an SBS Entity; or (2) five business days, if the dispute is with a counterparty that is not an SBS Entity. The rule also requires SBS Entities to notify the Commission and any applicable prudential regulator, if the amount of any security-based swap valuation dispute that was the subject of a previous notice increases or decreases by more than $20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level. These amendments are required to be provided to the Commission, and any applicable prudential regulator, no later than the last business day of the calendar month in which the applicable security-based swap valuation dispute increases or decreases by the applicable dispute amount. To the extent that the Commission receives confidential information pursuant to this collection of information that is otherwise not publicly available, including in connection with examinations or investigations, the SBS Entity can request the confidential treatment of the information.[678] If such a confidential treatment request is made, the Commission anticipates that it would keep the information confidential, subject to the provisions of applicable law;[679] whether any material is confidential is determined pursuant to applicable law, including but not limited to the Freedom of Information Act and Commission rules governing requests for confidential treatment.

With respect to the other information collected under the rule amendments and new rules, the firm can request the confidential treatment of the information.[680] If such a confidential treatment request is made, the Commission anticipates that it would keep the information confidential, subject to the provisions of applicable law;[681] whether any material is confidential is determined pursuant to applicable law, including but not limited to the Freedom of Information Act and Commission rules governing requests for confidential treatment.

G. Retention Period for Recordkeeping Requirements

For all Covered SRO Forms and for Rule 19b–4(e), records of these collections of information must be retained for at least five years, the first two years in an easily accessible place, pursuant to Rule 17a–1.[682]

Rule 17a–4 specifies the required retention periods for a broker-dealer, including an OTC derivatives dealer.[683] Rule 18a–6 specifies the required retention periods for non-broker-dealer SBSDs and non-broker-dealer MSBSPs.[684] Under these two rules, many of the required records must be retained for three years, while certain other records must be retained for longer periods.

X. Economic Analysis

The Commission is mindful of the costs imposed by and the benefits obtained from our rules. Section 2(b) of the Securities Act,[685] section 3(f) of the Exchange Act,[686] and section 2(c) of the Investment Company Act of 1940[687] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in or consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. In addition, section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition and to not adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.[688]

Where possible, we have attempted to quantify the costs and benefits expected to result from the amendments to the submission or posting requirements. However, in some cases we have been unable to quantify the economic effects because we lack the information necessary to provide an estimate. For example, we do not quantify the benefit to the general public of improved access to public filings made available in structured format.

This section discusses the benefits and costs of the amendments, as well as their potential effects on efficiency, competition, and capital formation. Some of the amendments are, however, technical, so they will likely not have significant economic effects.[689]

estimate for subsequent years of compliance is based on the following calculation: $500 × (53 SBS Entities) = $26,500.

[677] 17 CFR 240.24b–2(b).

[678] *See* 17 CFR 200.83.

[679] *See, e.g.,* 5 U.S.C. 552 *et seq.;* 15 U.S.C. 78x (governing the public availability of information obtained by the Commission). *See also* Risk Mitigation Adopting Release 85 FR at 6389–90.

[680] *See* 17 CFR 200.83; 17 CFR 240.24b–2. For Rule 15fk–1(c)(2)(ii)(A), SBS Entities may request confidential treatment for their CCO reports pursuant to Exchange Act Rule 83.

[681] *See, e.g.,* 5 U.S.C. 552 *et seq.;* 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

[682] 17 CFR 240.17a–1.

[683] 17 CFR 240.17a–4.

[684] 17 CFR 240.18a–6.

[685] 15 U.S.C. 77b(b).

[686] 15 U.S.C. 78c(f).

[687] 15 U.S.C. 80a–2(c).

[688] 15 U.S.C. 78w(a)(2).

[689] As stated in section II.G. above, the Commission is adopting a technical amendment to conform its Informal and Other Procedures to the changes adopted herein to Rules 6a–1, 6a–2, and 6a–3 with respect to Form 1 filings and to Rule 6a–4 with respect to Form 1–N filings required to be submitted to the Commission electronically. The Commission is also adopting a number of amendments to the FOCUS Report that will generally have no impact on or reduce the ongoing burden on filers because they will generally reduce questions about where and how to report items on the form.

A. Broad Economic Considerations

Commission rules require or provide the option for the filing in paper of certain forms and filings, including applications of entities seeking to register with the Commission as a national securities exchange (or seeking an exemption from such registration based on limited volume) or as a national securities association as well as amendments to these initial applications, reports regarding the listing and trading of new derivative securities products, clearing agency registration and updates, annual broker-dealer audited reports and risk assessment reports, and certain clearing agency supplemental materials. Other Commission rules require submission by email or do not specify the format in which a requirement should be satisfied, such as notices of changes in SRO membership.

By requiring the electronic submission on the Commission's EDGAR system or website posting of: (1) the Covered SRO Forms; (2) the information posted under Rule 19b–4(e); (3) the annual reports and related annual filings filed by broker-dealers, OTC derivatives dealers, SBSDs, and MSBSPs; and (4) other notices and reports from broker-dealers, SBSDs, MSBSPs, and Registered Entities (including Forms 17–H and Form X–17A–19) (''the affected documents''), and by requiring certain of the affected documents to be provided, where appropriate, in a structured, machine-readable data language, the amendments seek to streamline the submission process, and facilitate the transmission and effective use of submitted information. The amendments to certain Exchange Act rules and the affected documents are expected to increase the efficiency of, and remove certain costs related to ongoing compliance with, the existing requirements. The discussion below addresses the potential economic effects of the amendments, including their likely costs and benefits as well as the likely effects of the amendments on efficiency, competition, and capital formation, relative to the economic baseline, which consists of the filing practices in existence today.

We anticipate that the amendments that require electronic submission or posting of documents that are currently filed in paper would not result in an increase in filing costs, and in some cases result in cost savings to reporting entities on an ongoing basis as a result of overall reduction in internal time burdens and the elimination of the printing and mailing expenses associated with paper filing. We recognize that entities that do not presently use EDGAR to comply with other reporting obligations would incur an incremental cost of initial transition to electronic submission on EDGAR.[690] However, notwithstanding these initial transition costs, we anticipate that reporting entities would realize cost savings from electronic submission on EDGAR. With respect to the structured data requirements, and specifically the Inline XBRL reporting requirements, entities subject to Inline XBRL reporting requirements under the rules will incur ongoing costs associated with the requirement to encode and report information in Inline XBRL, and entities that do not presently use Inline XBRL will incur additional costs associated with the initial implementation of Inline XBRL compliance processes and/or the purchase of third-party Inline XBRL filing preparation services or software.[691]

Compared to paper filing, electronic submission or posting information directly to a website can expedite the availability of public disclosures. Improving the speed of disclosure to the public improves the price efficiency of markets by improving the timeliness of information available to market participants. Electronic submission or posting will also facilitate the Commission's ability to oversee compliance with the securities laws and its oversight of securities markets making this information available to the Commission quicker, with added and more accessible functionality for Commission staff to review, analyze, and respond to, as necessary. The structured data requirements under the amendments will augment these effects, allowing the Commission—and, where applicable, the public—to draw upon comparable information from other reporting periods and from other disclosing entities in assessing the reported disclosures.[692]

To implement the structured data requirements, the Commission must indicate particular data languages for filers to use. XBRL is an open-source data language that allows data elements to be stored and then read by machine, leading to an order of magnitude increase in process efficiencies. Similarly, custom XML-based data languages, which are more appropriate for simpler forms, are built on the open-source XML format and also enable machine readability. Both data languages are subject to continuous evolution and are sufficiently flexible to allow such evolution. Technology continuously evolves, so that any method of file storage—whether paper, or any electronic file format—eventually may become obsolete. Data languages, too, can be subject to obsolescence, though this is rarer. Once information is in a format that is machine readable, however, it can generate a variety of different file formats as those options evolve. As a result, should future data languages arise, the Commission and registrants will be in a better position to make use of them because certain data is already structured.

B. Baseline

The baseline against which the costs, benefits, and the effects on efficiency, competition, and capital formation of the amendments are measured consists of current requirements and practices for structuring data. The economic analysis appropriately considers existing regulatory requirements, including recently adopted rules, as part of the economic baseline against which the costs and benefits of the final amendments are measured.[693]

[690] *See supra* section IX.

[691] *See infra* section X.C.2.b. Similar structured data implementation costs will not result from most of the custom XML requirements, because affected entities will have the option of inputting their information in fillable forms, which EDGAR will then convert into the custom XML data language. However, structured data implementation costs will arise in connection with the custom XML requirement for information posted under Rule 19b–4(e), because the SRO will post the information on its website rather than on the EDGAR system (and its fillable form capabilities), and in connection with the custom XML requirements on Forms 1 and CA–1. The Commission expects exchanges and clearing agencies will have the requisite sophistication to encode their disclosures in custom XML and submit the custom XML documents to EDGAR directly (rather than manually completing lengthy fillable forms to be converted into custom XML documents). *See infra* section X.C.2.b; *see also supra* section IX.D.6.

[692] As discussed further in section X.B.1, the affected documents could be subject to requests for confidential treatment. Whether any filed material is confidential is determined pursuant to applicable law, including but not limited to the Freedom of Information Act and Commission rules governing requests for confidential treatment. The public would not directly use any confidential information contained in these documents.

[693] *See, e.g., Nasdaq* v. *SEC,* 34 F.4th 1105, 1111–15 (D.C. Cir. 2022). This approach also follows SEC staff guidance on economic analysis for rulemaking. *See* SEC Staff, Current Guidance on Economic Analysis in SEC Rulemaking (Mar. 16, 2012), *available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf* (''The economic consequences of proposed rules (potential costs and benefits including effects on efficiency, competition, and capital formation) should be measured against a baseline, which is the best assessment of how the world would look in the absence of the proposed action.''); *id.* at 7 (''The baseline includes both the economic attributes of the relevant market and the existing regulatory structure.''). The best assessment of how the world would look in the absence of the proposed or final action typically does not include recently proposed

One commenter expressed concern about the need to concurrently comply with the final amendments and ''other Commission initiatives that firms are implementing.'' [694] Although no commenter pointed to specific rules affecting the benefits and costs of these amendments, we have considered the potential effects on entities that are implementing other recently adopted rules during the compliance period for these amendments. Recently adopted rules that may place compliance obligations on some of the same entities with obligations under these amendments include the Settlement Cycle Adopting Release,[695] the Beneficial Ownership Adopting Release,[696] the Rule 10c–1a Adopting Release,[697] the Short Position Reporting Adopting Release,[698] Clearing Agency Governance Adopting Release,[699] the Treasury Clearing Adopting Release,[700] the Rule 605 Adopting Release,[701] the Customer Notification Adopting Release,[702] the Tick Size and Access Fee

actions, because that would improperly assume the adoption of those proposed actions.

[694] *See* SIFMA 5/22/2023 Letter at 14 (commenting on ''the time it will take firms to hire and train staff, identify and retain service providers and software, overhaul their systems, and engage in robust testing with the Commission, as well as attend to the numerous other Commission initiatives that firms are implementing (*e.g.,* T+1)''). Although the date of the T+1 transition has passed, *see infra* note 704 for relevant compliance and filing dates, we consider it and other recently adopted rules in this analysis. *See also supra* section IV.A. for a discussion of phased compliance dates.

[695] *Shortening the Securities Transaction Settlement Cycle,* Release No. 34–96930 (Feb. 15, 2023) [88 FR 13872 (Mar. 6, 2023)] (''Settlement Cycle Adopting Release''). The rules and rule amendments adopted in the Settlement Cycle Adopting Release shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date to one business day after the trade date. To facilitate an orderly transition to a shorter settlement cycle, a new rule also establishes requirements related to completing allocations, confirmations, and affirmations no later than the end of trade date for the processing of institutional transactions subject to the rule; requires registered investment advisers to make and keep records of each confirmation received, and of any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation indicating when it was sent or received; and requires clearing agencies that provide a central matching service to establish, implement, and enforce policies and procedures reasonably designed to facilitate straight-through processing and to file an annual report regarding progress with respect to straight-through processing. With certain exceptions, the rule had a compliance date of May 28, 2024. *See* Settlement Cycle Adopting Release, sections VII.

[696] *Modernization of Beneficial Ownership Reporting,* Release No. 33–11253 (Oct. 10, 2023) [88 FR 76896 (Nov. 7, 2023)] (''Beneficial Ownership Adopting Release''). Among other things, the amendments generally shorten the filing deadlines for initial and amended beneficial ownership reports filed on Schedules 13D and 13G, and require that Schedule 13D and 13G filings be made using a structured, machine-readable data language. The amendments became effective Feb. 5, 2024. Compliance with the new filing deadlines for Schedule 13G was not required before Sept. 30, 2024, and the rule's structured data requirements have a one-year implementation period ending Dec. 18, 2024. Beneficial Ownership Adopting Release, section II.G.

[697] *Reporting of Securities Loans,* Release No. 34–98737 (Oct. 13, 2023) [88 FR 75644 (Nov. 3, 2023)] (''Rule 10c–1a Adopting Release''). This rule requires any covered person who agrees to a covered securities loan on behalf of itself or another person to report specified information about the covered securities loan to a registered national securities association (currently FINRA is the only registered national securities association)—or rely on a reporting agent to do so—and requires the registered national securities association to make certain information it receives available to the public. Covered persons will include market intermediaries securities lenders, and broker-dealers, while reporting agents include certain brokers, dealers, or registered clearing agencies. The rule's compliance dates require that the registered national securities association propose rules pursuant to Rule 10c–1a(f) by May 2, 2024, and the proposed rules shall be effective no later than Jan. 2, 2025; that covered persons report Rule 10c–1a information to a registered national securities association on or by Jan. 2, 2026 (which requires that the registered national securities association have implemented data retention and availability requirements such for reporting); and that the registered national securities association publicly report Rule 10c–1a information by Apr. 2, 2026. Rule 10c–1a Adopting Release, section VIII.

[698] *Short Position and Short Activity Reporting by Institutional Investment Managers,* Release No. 34–98738 (Oct. 13, 2023), [88 FR 75100 (Nov. 1, 2023)] (''Short Position Reporting Adopting Release''). Under the new rule, institutional investment managers that meet or exceed certain specified reporting thresholds are required to report, on a monthly basis using the related form, specified short position data and short activity data for equity securities. The compliance date is Jan. 2, 2025. *See* Short Position Reporting Adopting Release, section VI. In addition, the Commission adopted an amendment to the national market system (''NMS'') plan governing the consolidated audit trail (''CAT'') created pursuant to the Exchange Act to require the reporting of reliance on the bona fide market making exception in the Commission's short sale rules. The Commission published the text of the amendment to the NMS plan governing the CAT (''CAT NMS Plan'') in a separate notice. The compliance date for the amendment to the CAT NMS Plan is July 1, 2025. *See* Notice of the Text of the Amendment to the National Market System Plan Governing the Consolidated Audit Trail for Purposes of Short Sale-Related Data Collection, Release No. 34–98739 (Oct. 13, 2023) [88 FR 75079 (Nov. 1, 2023)].

[699] *Clearing Agency Governance and Conflicts of Interest,* Exchange Act Release No. 34–98959 (Nov. 16, 2023) [88 FR 84454 (Dec. 5, 2023)] (''Clearing Agency Governance Adopting Release''). The Clearing Agency Governance Adopting Release establishes Rule 17Ad–25 for new governance requirements for registered clearing agencies. These include requirements for independent directors and for the composition of a registered clearing agency's board of directors, nominating committee, and risk management committee; requirements to identify and document existing or potential conflicts of interest involving directors or senior managers, and mitigate or eliminate and document the mitigation or elimination of such conflicts; and requirements for policies and procedures obligating directors to report conflicts of interest, managing risks from relationships with service providers, and requiring boards to solicit, consider, and document their consideration of the views of participants and other relevant stakeholders. The compliance date for Rule 17Ad–25 is Dec. 5, 2024, except that the compliance date for the independence requirements of the board and board committees in Rules 17Ad–25(b)(1), (c)(2), and (e) is Dec. 5, 2025. *See* Clearing Agency Governance Adopting Release, section III.

[700] *Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule with Respect to U.S. Treasury Securities,* Release No. 34–99149 (Dec. 13, 2023) [89 FR 2714 (Jan. 16, 2024)] (''Treasury Clearing Adopting Release''). Among other things, the amendments require covered clearing agencies for U.S. Treasury securities to have written policies and procedures reasonably designed to require that every direct participant of the covered clearing agency submit for clearance and settlement all eligible secondary market transactions in U.S. Treasury securities to which it is a counterparty. The compliance date was Mar. 18, 2024, for covered clearing agencies to file any proposed rule changes pursuant to Rules 17Ad–22(e)(6)(i), 17Ad–22(e)(18)(iv)(c), and 15c3–3, which must be effective by Mar. 31, 2025. With respect to the changes to Rule 17Ad–22(e)(18)(iv)(A) and (B), (i) covered clearing agencies were required to file any proposed rule changes regarding those amendments no later than June 14, 2024, and (ii) those changes must be effective by Dec. 31, 2025, for cash market transactions encompassed by section (ii) of the definition of an eligible secondary market transaction, and by June 30, 2026, for repo transactions encompassed by section (i) of the definition of an eligible secondary market transactions. Finally, the Commission amended the broker-dealer customer protection rule to permit margin required and on deposit with covered clearing agencies for U.S. Treasury securities to be included as a debit in the reserve formulas for accounts of customers and proprietary accounts of broker-dealers, subject to certain conditions. Compliance by the direct participants of a U.S. Treasury securities covered clearing agency with the requirement to clear eligible secondary market transactions is not required until Dec. 31, 2025, and June 30, 2026, respectively, for cash and repo transactions. *See* Treasury Clearing Adopting Release, section III.

[701] *Disclosure of Order Execution Information,* Release No. 34–99679 (Mar. 6, 2024) [89 FR 26428 (Apr. 15, 2024)] (''Rule 605 Adopting Release''). The Commission adopted amendments to rules requiring disclosures for order executions in NMS stocks, including expanding the scope of reporting entities, modifying the scope of orders covered by the rule, and modifying the information required to be reported under the rule. The rule had an effective date of June 14, 2024, and, with a few exceptions, a compliance date of Dec. 14, 2025. *See* Rule 605 Adopting Release, section VII.

[702] *Regulation S–P: Privacy of Consumer Financial Information and Safeguarding Customer Information,* Release Nos. 34–100155; IA–6604; IC–35193 (May 15, 2024) [89 FR 47688 (June 3, 2024)] (''Customer Notification Adopting Release''). The Commission amended Regulation S–P to require brokers, dealers, funding portals, investment companies, registered investment advisers, and transfer agents registered with the Commission or another appropriate regulatory agency to adopt written policies and procedures for incident response programs to address unauthorized access to or use of customer information. These must include procedures for providing timely notification to individuals affected by an incident involving sensitive customer information with details about the incident and information designed to help affected individuals respond appropriately. Among other things, the amendments also extended to transfer agents the requirements to safeguard customer records and information, and they broadened the scope of the information covered by those requirements. The compliance date for larger

Continued

Adopting Release,[703] and the Recovery/Wind-Down Adopting Release.[704]

1. Affected Entities

The entities primarily affected by the requirements include the filers or submitters of the affected documents and the users of the affected documents. Other affected entities include third parties that may be involved with the preparation and filing or submission of the affected documents and in facilitating the use of structured data filed or submitted with the Commission, as well as parties that may indirectly benefit from the use of the affected documents by others.

Filers or Submitters of Affected Documents

Entities that file or submit the affected documents include SROs, including: national securities exchanges and exempt exchanges; notice-registered Security Futures Product Exchanges; registered national securities associations; and registered and exempt clearing agencies. Filers or submitters of the affected documents also include broker-dealers and SBS Entities (and certain affiliates thereof).[705]

entities is Dec. 3, 2025, and June 3, 2026, for smaller entities. *See* Customer Notification Amendments, section II.F

[703] *Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders,* Release No. 34–101070 (Sept. 18, 2024) [89 FR 81620 (Oct. 8, 2024)] (''Tick Size and Access Fee Adopting Release''). These amendments introduce one minimum pricing increment that is less than $0.01, *i.e.,* $0.005, for quotes and orders priced $1.00 or more for NMS stocks that have a time weighted average quoted spread of $0.015 or less. The amendments also reduce the access fee caps under Reg NMS Rule 610 and require national securities exchanges to make the amounts of all fees and rebates determinable at the time of trade execution. The amendments also accelerate the implementation of the round lot and odd-lot information definitions adopted in 2020 and add information about the best odd-lot order to the definition of odd-lot information. The amendments are effective Dec. 9, 2024. For Rules 610 and Rule 612, and the round lot definition, the compliance date will be Nov. 3, 2025. For odd-lot information, the compliance date will be May 1, 2026. *See* Tick Size and Access Fee Adopting Release, section VI.

[704] *Covered Clearing Agency Resilience and Recovery and Orderly Wind-Down Plans,* Release No. 34–101446 (Oct. 25, 2024) (''Recovery/Wind-Down Adopting Release''). These amendments add new requirements related to the collection of intraday margin by a covered clearing agency (''CCA'') and the use of substantive inputs in its risk-based margin system. They also establish required elements of a CCA's recovery and orderly wind-down plan. The effective date is Jan. 17, 2025. Each covered clearing agency will be required to file with the Commission any proposed rule changes required under Rule 19b–4 and any Advance Notices required under Title VIII of the Dodd-Frank Act and Rule 19b–4(n) no later than Apr. 17, 2025. The proposed rule changes and the Advance Notices must be effective by Dec. 13, 2025. *See* Recovery/Wind-Down Adopting Release, section III.

[705] Not all of the affected documents listed for a particular entity type below apply to every entity that falls within that entity type. For details on the subsets of affected entities that file or submit particular affected documents, *see supra* section IX. With particular respect to SBS Entities, the counts above include, as of June 21, 2024, 10 SBS Entities that relied on orders granting substituted compliance under Exchange Act Rule 3a71–6 in complying with the requirements under Exchange Act Rule 15fk–1, 9 non-bank SBS Entities that relied on orders granting substituted compliance under Exchange Act Rule 3a71–6 in complying with the reporting requirements under Exchange Act Rule 18a–7(c), and 19 SBS Entities that relied on orders granting substituted compliance under Exchange Act Rule 3a71–6 in complying with the notice requirements under Exchange Act Rule 15fi–3. *See* Substituted Compliance Notices, *available at https://www.sec.gov/tm/Substituted-compliance-Notices.*

Affected Documents and Affected Filers or Submitters

Affected Document	Type of Affected Filer or Submitter	Filer or Submitter Count
Form X-17A-5 Part III	Broker-dealers (including OTC derivatives dealers) and non-bank SBS Entities	3,267 as of 12/31/23
Form 17-H	Broker-dealers (including OTC derivatives dealers)	Approximately 241 as of 12/31/23
FOCUS Report Part II	Broker-dealers (including OTC derivatives dealers) and non-broker-dealer SBS Entities	486 as of 12/31/23
FOCUS Report Part IIA	Broker-dealers (including OTC derivatives dealers)	2,946 as of 12/31/23
FOCUS Report Part IIC	Bank SBS Entities	30 as of 6/21/2024
Form 1	National securities exchanges	24 as of 12/31/23
Form 1-N	Security futures product exchanges	2 as of 12/31/23
Form X-15AA-1; Form X-15AJ-1; Form X-15AJ-2	Registered national securities associations	1 as of 12/31/23
Form CA-1	Registered and exempt clearing agencies	13 (11 operational) as of 12/31/23
Rule 17a-22 materials	Registered clearing agencies	8 (6 operational) as of 12/31/23
Form X-17A-19	National securities exchanges and registered national securities associations	25 as of 12/31/23
Form 19b-4(e)	National securities exchanges	24 as of 12/31/23
VDN	SBS Entities	53 as of 6/21/24
CCO Report	SBS Entities	53 as of 6/21/24
ANE Exception Notice	Majority-owned affiliates of Relying Entities that are either registered SBSDs or registered brokers that meets certain capital and other requirements	24 (estimated) as of 12/31/23

Users of Affected Documents

The entities that use (*e.g.,* examine, store, analyze) each affected document vary based on whether the particular document is publicly available.[706] If a document is confidential, only the Commission (and, in certain cases, other regulators and regulatory organizations) will be able to directly access and use the documents. Documents that are not confidential will be publicly available, and as such can be directly used by public entities in addition to the Commission, such as investors and other market participants, financial and market analysts, financial press, and other regulatory agencies or organizations.[707]

Third-Party Service Providers

In addition to the preparers and users of the affected documents, the other entities affected by the rule amendments are third-party service providers that assist in electronic filing and, in some cases, structuring, of regulatory documents and help facilitate the use of structured data. As discussed in further detail below, the cost to filers or submitters of the amended rules includes, in some instances, the cost of paying third-party service providers to prepare electronic and structured documents.[708] Conversely, such third-party service providers will benefit from increased demand for electronic filing and structured data services under the amended rules.

With particular respect to structured data, entities currently subject to structured data requirements under Commission rules often pay third-party

[706] *See supra* section IX.F. As stated above in section X.A, whether any filed material is confidential is determined pursuant to applicable law, including but not limited to the Freedom of Information Act and Commission rules governing requests for confidential treatment.

[707] *See, e.g.,* Arun Gupta, *supra* note 479 (Federal Reserve Board staff research paper using balance sheet data from Form X–17A–5 Part III to examine the internal capital markets of dealer banks); K. Srinivasan, *The Securitization Flash Flood,* (July 27, 2016; rev. June 4, 2024), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2814717* (academic research paper using data from Form X–17A–5 Part III to assess repo activities of large broker-dealers) (retrieved from SSRN Elsevier database).

[708] *See infra* section X.C.2.b.

service providers to structure their disclosures, or to license structuring compliance software that allows filers or submitters to structure their disclosures internally. The specific amounts paid to third-party providers of structured data compliance services and/or software vary significantly based on a number of factors, such as the particular filing or submission on which structured data is required, the number of data points to be structured, the size of the filer or submitter, the industry to which the filer or submitter belongs, the number of individual users of the structured data compliance software, and the extent to which the structuring is fully outsourced. For example, smaller reporting companies are particularly likely to fully outsource their structured data preparation requirements to third-party service providers, leading to different cost dynamics than other companies that license third-party structured data preparation software and structure their disclosures in-house.[709] Based on the Staff's understanding of third-party structured data compliance pricing, smaller filers typically pay between $1,500 and $5,000 per year for third-party structured data compliance services and/or software, while larger filers typically pay between $5,000 and $30,000 per year for such services and/or software.[710]

In some cases, rather than use a third-party structured data compliance service or software provider, filers or submitters will have already structured their data in-house, independently of any Commission disclosure requirements. For example, rather than paying third-party structured data compliance service providers, some filers or submitters use ERP systems or other data management platforms that include a data structuring component.[711] In some instances, filers or submitters of a custom XML document may already be using Inline XBRL to structure similar data for internal business purposes (such as through the use of ERP systems).[712] Furthermore, companies that are affiliated with one another may be able to leverage each other's compliance software licenses or service agreements and experience in complying with the structured data requirements.

In addition, with particular respect to custom XML requirements on EDGAR forms, some filers or submitters may comply by inputting their disclosures into fillable web forms on the EDGAR website; EDGAR then converts these inputted disclosures into the applicable custom XML data language. In such instances, filers or submitters forgo the cost of paying third-party structured data compliance service providers. With respect to the rule amendments, because use of the fillable form permits filers or submitters to forgo the costs of structuring, we expect most entities affected by the custom XML requirements will opt to use fillable forms rather than structure directly in custom XML.

Other filers or submitters of custom XML documents choose not to use the fillable web form; instead, they structure their disclosures in the applicable custom XML data language and file or submit that structured custom XML document on EDGAR. These filers or submitters typically incur implementation costs to integrate any new or updated custom XML schemas into their data systems, and then incur decreased structured data costs after such integration. Such filers or submitters may find direct submission in custom XML beneficial, because it allows for greater automation for filing or submitting already structured data without the need for a final manual step of converting structured data into unstructured text to be typed into fillable web fields. For this reason, the Commission expects the SROs that file Form 1 and Form CA–1, because they are likely to have existing data management systems (or have the internal resources and technical capability to establish such systems) that cover some of the disclosures required to be structured in custom XML, will opt to structure disclosures directly in custom XML rather than using the fillable EDGAR web form.[713] Nonetheless, providing both the fillable web form option and the direct custom XML structuring option for the custom XML requirements in the rule, as is done for most other custom XML forms on EDGAR, will provide useful flexibility for any current or future affected entities that opt to take an approach that differs from our preliminary assumptions, without compromising the usefulness and accessibility of the resulting disclosures.

While not required for structured data use, some data users (including some investors and analysts) pay third-party service providers for software that can facilitate their usage and analysis of structured data. As with structured data compliance, the specific amounts paid for third-party structured data research software vary significantly based on a number of factors, such as the number of individual software users, whether the user is an individual or an enterprise, and the particular type of functionality offered. Based on the Staff's understanding of third-party structured data research software pricing, data users typically pay between $1,000 and $15,000 per year for third-party structured data research software.[714] Other data users, especially those with more technical experience and sophistication, import structured data into their own systems and analyze the data without paying for third-party software.[715]

2. Paper and Limited Electronic Submission

Certain of the affected documents are currently filed or submitted in paper format. Specifically, the Commission's regulatory framework requires an entity seeking to be registered as a national securities exchange, as a clearing agency, or as a security futures product exchange, to file in a paper-based format certain forms that are mandated by rules under the Exchange Act. Filers are also

[709] *See supra* note 246 (stating that ''for the sake of compliance, many firms, especially smaller firms that lack extensive resources, have outsourced the creation and filing process. . .''). *See* also *infra* section X.C.2.b (discussing a cost survey conducted by the Association of International Certified Professional Accountants, in which 1,032 smaller reporting companies reported full outsourcing of their XBRL structuring requirements).

[710] Some compliance service providers publicly disclose or advertise pricing information on their websites. *See, e.g.,* EDGAR Filing Services, Advanced Comp. Innovations, Inc., *http://www.edgar-services.com/* (last visited Apr. 3, 2024). Other compliance service providers do not publicly disclose pricing information on their websites, instead requiring individual pricing consultations. *See also infra* section X.C.2.b.

[711] *See, e.g.,* Feng Guo et al.; Enterprise Resource Planning Systems and XBRL Reporting Quality, 35 J. Info. Sys. 77, Sept. 1, 2021 (defining ERP systems as ''large-scale, modularly packaged information systems that have been widely adopted by midsize and larger firms in recent decades'' and stating that ''most ERP systems integrate an eXtensible Business Reporting Language (XBRL) component in their core modules. . .'').

[712] *See supra* sections II.A.3 and II.D.5.

[713] Such disclosures could include, for example, schedules of fees (Exhibit H to Form 1), lists of participants or applicants for participation (Exhibit N to Form CA–1), and schedules of traded securities (Exhibit N to Form 1).

[714] Some research service providers publicly disclose or advertise pricing information on their websites. *See, e.g.,* Calcbench, *https://www.calcbench.com/payment/pricing* (last visited Apr. 3, 2024); TagniFI, *https://about.tagnifi.com/pricing/* (last visited Apr. 3, 2024); FinDynamics, *https://findynamics.com/subscriptions/* (last visited Apr. 3, 2024). Other research service providers do not publicly disclose pricing information on their websites, instead requiring individual pricing consultations.

[715] Structured data filed with or submitted to the Commission (other than structured data filed or submitted on non-public documents) are freely available to access and download. *See* DERA Data Library, *available at https://www.sec.gov/dera/data*; Structured Disclosure RSS Feeds, *available at https://www.sec.gov/structureddata/rss-feeds-submitted-filings.*

required to submit paper-based amendments to their respective forms. The forms required to be filed in paper format include Forms 1, 1–N, X–15AA–1, X–15AJ–1, X–15AJ–2, CA–1. Form 19b–4(e) also is required to be submitted in paper format. In addition, paragraphs (d)(6) of Rule 17a–5 and (c)(6) of Rule 18a–7 provide that broker-dealer and SBS Entity annual reports, respectively, must be sent to the Commission's principal office in Washington, DC, and appropriate regional office or they may be submitted to the Commission electronically in accordance with directions provided on the Commission's website. Some broker-dealers voluntarily file annual reports electronically on EDGAR,[716] and instructions for doing so are posted on the Commission's website. For the 12 months ending December 31, 2023, the Commission received 1,498 filings of the annual reports in paper form and 1,769 electronically via EDGAR. The proportion of annual reports filed electronically has been steadily increasing over the years since it was first permitted in 2015.

OTC derivatives dealer annual reports filed under Rule 17a–12 must be filed at the Commission's principal office under paragraph (p) of that rule. Further, Rule 17h–2T permits quarterly and annual risk assessment reports to be filed with the Commission in paper-based format, and Rule 17a–19 currently requires every national securities exchange and registered national securities association to file a Form X–17A–19 with the Commission in paper format at its principal office. In some circumstances, the Commission's regulatory framework requires or permits submission of documentation by email. Specifically, Exchange Act Rule 3a71–3(d)(1)(vi) requires the Registered Entity to provide the ANE Exception Notice by submitting it to the electronic mailbox described on the Commission's website. Further, notices made pursuant to Rule 15fi–3(c) may be made via email or on EDGAR. Annual compliance reports provided pursuant to Rule 15fk–1(c) may be submitted by an SBS Entity as a paper or electronic submission.

In addition, current Rule 17a–22 under the Exchange Act requires that within 10 days after issuing, or making generally available, to its participants or to other entities with whom it has a significant relationship, such as pledgees, transfer agents, or self-regulatory organizations, any material (including, for example, manuals, notices, circulars, bulletins, lists or periodicals), a registered clearing agency shall file three copies of such material with the Commission.[717] Commission staff, however, released the Staff Statement on COVID–19 flexibility in early April 2020 and updated it in June 2020. Since that time, consistent with the Updated Staff Statement, filers and registrants have made alternate arrangements for the delivery, execution, and notarization of certain filings, including filings to be made pursuant to Rule 17a–22.[718] These alternate arrangements have included electronic submission, similar to what is being adopted.

When a paper filing is received, the Commission staff scan it into PDF format, and upload it to EDGAR or make it available to Commission staff. For some filings, such as broker-dealer's annual reports, this process can take an average of several weeks from the date of receipt of a paper filing until it is scanned and the public portion published on EDGAR, and the confidential portion is available to Commission staff.

3. Structured Data

Previously, four of the affected documents could be filed or submitted electronically using EDGAR—Form X–17A–5 Part III, Form 17–H, VDNs, and CCO reports.[719] Form X–17A–5 Part III, the facing page for annual reports required to be filed with the Commission under Exchange Act Rules 17a–5, 17a–12, and 18a–7 (which generally must be audited), is filed by broker-dealers (including OTC derivatives dealers) and non-bank SBS Entities; Form 17–H is filed by broker-dealers subject to paragraph (a) of Rule 17h–2T; and the VDNs and CCO reports are submitted by SBS Entities. Each of Form X–17A–5 Part III, and Form 17–H, and the CCO reports was, when filed or submitted electronically, partially structured (*i.e.,* machine-readable).[720] None of the other affected documents was previously structured, either in whole or in part.

Form X–17A–5 Part III elicits registrant and accountant identifying information and includes an oath or affirmation in a custom XML-based data language specific to that form.[721] As is the case with most of the Commission's other custom XML forms, filers of Form X–17A–5 Part III had (and will continue to have) the option of manually inputting information into a fillable form that EDGAR subsequently converts into the custom XML data language for Form X–17A–5 Part III.[722] Form X–17A–5 Part III filers were then able (and will continue to be able) to attach the remaining documents required by the applicable rules, including financial statements and supplemental reports, in unstructured formats such as PDF and HTML.[723]

Form 17–H is similar to Form X–17A–5 Part III in that its facing page, when filed electronically through EDGAR, was (and will continue to be) structured in a custom XML-based data language specific to Form 17–H.[724] In addition, Part II of Form 17–H, which consists of securities and commodities position disclosures for the filing broker-dealer's material associated persons, was (and will continue to be) submitted in the Form 17–H-specific custom XML when filed electronically through EDGAR.[725] Form 17–H filers have had (and will continue to have) the option of manually inputting Part I facing page information and Part II positions information into a fillable web form that EDGAR subsequently converts into the custom XML for Form 17–H.[726]

In addition, the CCO reports were (and will continue to be), when filed electronically through EDGAR, partially structured in a custom XML-based data language specific to the reports.[727] SBS

[716] We note that Commission staff previously stated that it would not recommend enforcement action to the Commission under Rule 17a–5 or Rule 17a–12 if a broker-dealer or OTC derivatives dealer files the annual and supplemental reports required under those rules electronically through the EDGAR system in accordance with the instructions and conditions contained on the Commission's website in lieu of filing them with the Commission in paper form. *See* Letter to Kris Dailey Vice President, Risk Oversight and Operational Regulation, FINRA, from Michael Macchiaroli, Associate Director, Division, Commission (Jan. 27, 2017), *available at https://www.sec.gov/divisions/marketreg/mr-noaction/2017/finra-012717-electronic-filing-annual-reports.pdf.*

[717] 17 CFR 240.17a–22.

[718] Division Staff Statement Regarding Requirements for Certain Paper Submissions in Light of COVID–19 Concerns (Apr. 2, 2020), *available at https://www.sec.gov/tm/paper-submission-requirements-covid-19; see also* Updated Staff Statement, *supra* note 7.

[719] *See supra* sections IV.A, IV.B, V.C, and V.D.

[720] More precisely, the CCO report filed on EDGAR was accompanied by a custom XML execution page with information about the submitting SBSE and the submission. The CCO report itself, however, was in unstructured PDF format. *See EDGAR Filer Manual* Vol. II at 8.2.20.6.

[721] *See* EDGAR X–17A–5 Part III Technical Specification, *available at https://www.sec.gov/info/edgar/specifications/form-x-17a-5-xml-tech-specs.htm.*

[722] *See EDGAR Filer Manual* Vol. II at 8.2.22.

[723] *See id.*

[724] *See* EDGAR 17–H Technical Specification, *available at https://www.sec.gov/info/edgar/specifications/form-17-h-xml-tech-specs.htm.*

[725] *See id.*

[726] *See* EDGAR Filer Manual, Volume II at 8.2.24.

[727] *See* EDGAR SBS Entity Forms Technical Specification, *available at https://www.sec.gov/info/edgar/specifications/form-sbs-entity-xml-tech-specs.htm.*

Entities had (and will continue to have) the option of manually inputting the execution page information into a fillable web form that EDGAR subsequently converts into the custom XML-based data language specific to EDGAR submissions by SBS Entities.[728]

The broker-dealers (including OTC derivatives dealers) and non-bank SBS Entities that file Form X–17A–5 Part III and, where applicable, Form 17–H, are also subject to other structuring requirements under Commission rules. As discussed, all of these entities are required to file FOCUS Reports under Exchange Act Rule 17a–5, Rule 17a–12, or Rule 18a–7, as applicable.[729] Broker-dealers, SBSDs, MSBSPs, and OTC derivatives dealers file these FOCUS Reports using a fillable web form that the relevant eFOCUS system converts into a custom XML.[730] In addition, SBSDs and MSBSPs must file in EDGAR Form SBSE, SBSE–A, or SBSE–BD, as applicable, to register as an SBS Entity, as well as amendments to those Forms if the information in them is or has become inaccurate or incomplete; Forms SBSE, SBSE–A and SBSE–BD are structured using a custom XML-based data language specific to the form.[731] Broker-dealers, SBSDs, MSBSPs, and OTC derivatives dealers were not previously subject to any Inline XBRL requirements under Commission rules.

Since the publication of the proposing release in March 2023, the Commission has finalized rules with new structured data obligations. These structured data obligations, which are now part of the baseline, may increase the familiarity that some affected filers or submitters have with EDGAR and custom XML filing. Specifically, beginning in January 2025, any broker-dealers and registered SBS Entities that are ''institutional investment managers'' as defined in section 13(f)(6)(A) of the Exchange Act, and that meet the thresholds set forth in Rule 13f–2 under the Exchange Act, will be required to file in EDGAR monthly short sale position and activity reports requirements on Form SHO using a custom XML-based language specific to Form SHO.[732] To the extent there is any overlap between broker-dealers that are ''institutional investment managers'' and meet the thresholds associated with Form SHO filing obligations, and broker-dealers that file Form X–17A–5 Part III using paper rather than EDGAR,[733] those broker-dealers will gain experience with custom XML EDGAR filing as a result of the rulemaking.[734]

Similarly, beginning with the twelve-month period ending December 31, 2024, a limited subset of clearing agencies (specifically, those clearing agencies that provide a central matching service) will be required to file annual reports on straight-through processing on EDGAR in Inline XBRL.[735] This experience with EDGAR and Inline XBRL may, for those clearing agencies, decrease the cost of compliance with Inline XBRL requirements for Form CA–1, relative to the costs described in the Proposing Release.[736]

The affected documents previously included only a limited amount of structured data. For execution pages of Form X–17A–5 Part III reports, Form 17–H reports and CCO reports filed or submitted on EDGAR, the inclusion of structured identifying information on the facing page facilitates the filtering and retrieval of reports from particular subsets of filers or submitters. For Part II of electronically submitted Form 17–H reports, the inclusion of structured material associated person disclosures enables more efficient mathematical calculations of the disclosed numerical information. For any Structured Documents or portions thereof under a successful confidential treatment request, such enhanced functionality will be unavailable to parties other than Commission staff; for all other Structured Documents or portions thereof, including those which are not subject to a confidential treatment request or for which the Commission determined not to grant confidential treatment, such enhanced functionality will be available to Commission staff and to the public.

C. Economic Effects

1. Benefits

a. Electronic Submission and Posting; Revisions to the FOCUS Report

Electronic submissions can save time, improve efficiency, and reduce errors. After an initial setup cost described below,[737] these changes can potentially reduce the cost for reporting entities because the shift to electronic submission can obviate the need for printing costs and improve the efficiency of filing preparation. In addition, the improved accuracy, speed, and efficiency of the documents provided to the Commission can reduce the costs associated with receiving and processing submissions, in part by reducing the time, processing, and search costs relative to the manual nature of non-electronic document processing, and accordingly aid the Commission's examination and oversight functions. For some filings, such as broker-dealer annual reports, eliminating the need to scan paper documents could reduce processing time by as much as several weeks. An increase in the accuracy and timeliness of processing submissions boosts the efficiency of Commission document review, processing, and quality assurance. Furthermore, electronic submissions allow reporting entities and Commission staff to more easily access or submit documents during disruptive events—like the COVID–19 pandemic—when their physical work facilities may be inaccessible. Commenters were nearly unanimous in their support of electronic submission and posting generally, and focused their comments on the specific structured data requirements.

The release also includes several amendments designed to update the FOCUS Report and related requirements. First, the release amends FOCUS Report Part II by adding data

[728] *See* EDGAR Filer Manual, Volume II at 8.2.20.6. As stated above, the CCO report filed on EDGAR was accompanied by a custom XML execution page with information about the submitting SBSE and the submission. The CCO report itself, however, was in unstructured PDF format.

[729] *See* 17 CFR 240.17a–5; 17 CFR 240.17a–12; 17 CFR 240.18a–7.

[730] *See* eFOCUS—Fin. & Operational Combined Unif. Single Reports, *https://www.finra.org/filing-reporting/regulatory-filing-systems/efocus* (last visited Apr. 4, 2024); eFocus Filing Transmission, *https://www.finra.org/filing-reporting/focus/efocus-filing-transmission* (last visited Apr. 4, 2024); FINRA eFOCUS User Guide: Training and Reference Manual, *https://www.finra.org/sites/default/files/p118798.pdf* (last visited Apr. 4, 2024).

[731] *See EDGAR Filer Manual, Volume II* at 8.2.19 and 8.2.20.

[732] *See* 17 CFR 240.13f–2(a)(3); *Short Position Adopting Release* at 75105 (stating that ''institutional investment managers,'' which will be subject to Form SHO filing requirements, ''typically can include brokers and dealers, investment advisers, banks, insurance companies, pension funds and corporations'').

[733] SBS Entities and some broker-dealers already have experience with EDGAR and custom XML filing. SBS Entities file variants of Form SBSE on EDGAR in custom XML. Broker-dealers that file Form X–17A–5 Part III electronically do so on EDGAR using custom XML for the execution page. *See* Commission, ''XML Technical Specifications,'' *available at https://www.sec.gov/edgar/filer/technical-specifications#xml* (last visited June 5, 2024).

[734] The rule does not alter the compliance cost estimates associated with the custom XML requirements on Form X–17A–5 Part III, because, as explained later in the economic analysis, the Commission expects broker-dealers to comply with the custom XML requirement by inputting their disclosures into a fillable EDGAR web form rather than structuring the disclosures themselves.

[735] *See* 17 CFR 240.17ad–27(d); Settlement Cycle Adopting Release at 13910.

[736] *See infra* note 860. Clearing agencies that do not provide a central matching service, as well as national securities exchanges subject to Form 1 filing requirements, were not previously subject to Inline XBRL requirements under the Commission's rules and do not have this experience.

[737] *See infra* section X.C.2.

fields to the income statement so firms can report more complete data, updating the CFTC Minimum Capital Requirements section for consistency with the CFTC's Form 1–FR, and updating the customer reserve and PAB computations for consistency with recent amendments to Rule 15c3–3a. The Commission received comment in favor of these amendments.[738]

Second, the Commission is aligning the text in FOCUS Report Part IIC with the text in FFIEC Form 031. Making these amendments should reduce the overall burden because information input in the amended form will be consistent with FFIEC Form 031 (*i.e.,* the Call Report), which many Part IIC filers are already required to complete.[739] The amendments also remove ambiguity about how to complete the Part IIC, which have resulted in SEC staff receiving a number of phone calls seeking assistance on how to reconcile these incompatibilities. The Commission received comment agreeing with the benefits and supporting these proposed changes.[740]

Third, the Commission is requiring only two of the three signature lines to be signed on the FOCUS Report's cover page and allows these signatures to be signed either manually or electronically. Since the revised FOCUS Report was adopted, it has come to the Commission's attention that obtaining the signatures of all three principal officers on or close to the same day may be burdensome, especially for larger firms with thousands of employees. Therefore, the Commission is requiring only two of the three principal officers' signatures to balance the Commission's desire for individual accountability with the burden on the filer. Reducing the number of required signatures reduces the burden of submitting FOCUS reports. The use of electronic signatures would also reduce the burden in the long run because firms would not need to obtain and store wet signatures, especially due to the increase in remote work. Commenters agreed with the benefits of the use of electronic signatures and the reduction in the number of required signatures, with some suggesting further reducing the number of required signatures.[741]

Finally, the Commission is requiring OTC derivatives dealers to file the FOCUS Report electronically on the SEC eFOCUS system instead of in paper. The SEC eFOCUS system offers benefits of electronic filing of forms over paper, reducing costs and making information more easily usable and timely.

b. Structured Data

In general, the structured data requirements will benefit investors and markets by increasing the accessibility and usability of the disclosures in the Structured Documents, thereby increasing transparency and insight into the operations, governance, management, financial condition, and other characteristics of the affected entities. Requiring machine-readability for the disclosures will enable significantly more efficient retrieval, sorting, filtering, comparison, aggregation, and other analysis of the disclosures across reporting entities and time periods. The Commission expects the exact nature and magnitude of such benefits will vary based on several factors, which are discussed herein.

As discussed subsequently in further detail, some commenters agreed that the structured data requirements will provide such benefits, while other commenters did not. One commenter stated that the structured data requirements for forms, reports, and notices provided by broker-dealers and SBS Entities, coupled with the required electronic filing or submission on EDGAR, will promote greater standardization and consistency in reporting and facilitate investor comparison and analysis of information across different entities.[742] Another commenter stated that the machine-readability of the Structured Documents will render them significantly easier, faster, and more efficient to process than unstructured PDF, HTML, or text versions, will improve the accessibility of the data for retrieval, aggregation, and analysis, and will facilitate validation to improve the quality of reported data.[743]

By contrast, one commenter stated that XBRL requirements for broker-dealer reports will not provide benefits that justify compliance burdens.[744] The commenter stated that, because regulators receive periodic FOCUS reports that are encoded as they have been for decades, regulators do not need encoded (*i.e.,* machine-readable) broker-dealer financial statements.[745] The Commission disagrees with the commenter's view, because the amended rules include XBRL requirements for the annual broker-dealer audited reports (Form X–17A–5 Part III), and those reports include additional disclosure that the periodic FOCUS reports do not include.[746] Because regulators will be able to analyze this additional information much more efficiently when it is provided in a structured, machine-readable format (rather than in paper or PDF format), regulators—and ultimately the market—will derive a significant benefit from the Inline XBRL requirement for Form X–17A–5 Part III.

The same commenter also stated that customers of broker-dealers do not read Form X–17A–5 Part III, and investors in broker-dealers do not need Form X–17A–5 Part III.[747] The Commission disagrees with this statement—there are multiple examples of public market participants using Form X–17A–5 Part III information to the benefit of broker-dealer investors and customers.[748]

Another commenter stated that structured data requirements will provide no clear benefit and emphasized that the use of Inline XBRL for narrative-based reports in particular will provide no material benefit.[749] According to this commenter, the benefits the Commission cited in the proposal (*e.g.,* keyword searching and redlining) are not exclusive to structured data languages like XBRL and custom XML, because PDF documents can also be searched and redlined.[750] However, while PDF documents can be searched and redlined, structuring textual disclosures in Inline XBRL enables users to perform *targeted* searches and redline comparisons of specific disclosure items, rather than having to search through (or redline) entire documents. For example, under the rule amendments, a data user will be able to search for a particular phrase of interest within only the significant accounting policies financial statement footnote across all Form X–17A–5 Part III filers, rather than having to search the entirety of all Form X–17A–5 Part III filings for that phrase, and manually reviewing the results from each Form X–17A–5 Part III filings to determine which results were located in the significant accounting policies footnote.

[738] *See* SIFMA 11/21/2023 Letter at 1–2.

[739] Of the affected entities in this release, 29 filed FOCUS Report Part IIC as of Dec. 31, 2023. *See supra* section IX.C.9.

[740] *See* SIFMA 5/22/2023 Letter at 1, OCC 5/22/2023 Letter at 1, XBRL Letter at 1, Umbs Letter, Pathiakis Letter, Till Letter, Anonymous 4/18/2023 Letter, Sage Letter, Kulodzik Letter, Jorgensen Letter, Mack Letter, Anonymous 4/17/2023 Letter, Wohlfahrt Letter, Brady Letter, McMahon Letter, Smith Letter.

[741] *See* Wichkoski Letter, OCC 5/22/2023 Letter, SIFMA 5/22/2023 Letter, Anonymous 4/17/23 Letter, and Wohlfahrt Letter.

[742] *See* Wohlfahrt Letter.

[743] *See* XBRL Letter at 3, 7, and 9.

[744] *See* Integrated Solutions Letter at 2–3.

[745] *See id.* at 4.

[746] *See supra* sections IV.A and VII.A.

[747] *See* Integrated Solutions Letter at 4.

[748] *See supra* note 479.

[749] *See* SIFMA 5/22/2023 Letter at 1, 6, and 7.

[750] *See id.* at 6.

This is an overall benefit to the market and end users because the Commission will be able to efficiently assess common significant accounting policies disclosures across all Form X–17A–5 Part III filers.

The commenter also stated that the requirement to submit fillable web forms on EDGAR in lieu of PDFs would undermine the rule amendments' goals by removing efficiencies in firms' existing systems (such using existing systems to populate a PDF automatically) and introducing opportunities for human error.[751] The Commission disagrees. To the extent that firms manually input data, inputting values into a fillable form would not incur substantially higher costs and or opportunities for error compared to inputting the same information and submitting the form via other means. To the extent firms automatically populate forms by using their own existing systems to create XML files, the EDGAR Filer Manual provides for submission of certain filings in a custom XML-based data language, which can be used to reach a similar result.[752] In addition, the structured data requirement enables EDGAR to perform technical validations (*i.e.,* programmatic checks to ensure the documents are appropriately standardized, formatted, and complete) upon intake, thus improving the quality of the filed data by decreasing the incidence of errors (such as the omission of values from fields that should always be populated).[753] Furthermore, allowing firms to submit PDF documents would not achieve the benefits associated with the structured data requirements under the rule amendments to the same extent. The structured data requirements under the rule amendments will increase the accessibility and usability of the disclosures in the Structured Documents, for example by enabling more efficient retrieval, sorting, filtering, comparison, aggregation, and other analysis of the disclosures, thereby increasing transparency and insight into the operations, governance, management, financial condition, and other characteristics of the affected entities.

Structured Data Benefits

As an initial point of comparison, some research on XBRL requirements for public operating company financial statement disclosures has found that such requirements have mitigated information asymmetry by reducing information processing costs, thereby facilitating access and analysis of the disclosures on a large-scale basis.[754] This reduction in information processing cost has been observed to facilitate the monitoring and analysis of firms by external parties.

These external parties include investors themselves, as well as other entities that process firm disclosures into conclusions that often influence investors and markets; such entities include financial analysts, data aggregators, academic researchers and financial media (collectively, ''information intermediaries'').[755] Institutional investors are more likely to access XBRL data directly, whereas retail investors are more likely to benefit from the use of XBRL data by information intermediaries.[756]

Regulators, including the Commission and the Federal Deposit Insurance Corporation (''FDIC''), have also been observed to leverage XBRL disclosure benefits in better fulfilling their mandates.[757] The Commission staff uses XBRL data to efficiently analyze large quantities of information in support of risk assessment, rulemaking, and enforcement activities, including as part of its internally developed Financial Statement Query Viewer and Inline Viewer applications.[758] The regulatory use of XBRL is particularly relevant to affected documents that are subject to confidential treatment and thus only accessible by the Commission and its staff.[759]

The enhanced monitoring facilitated by XBRL requirements has been observed to influence the behavior of firms relevant to governance and compliance, including firms' disclosure and reporting choices. For example, one study found that firms increase quantitative footnote disclosures upon implementation of detailed tagging requirements.[760] Also, multiple studies

[751] *See id.* at 2, 11.

[752] *See id.* at 11 (suggesting, in the context of VDNs, that the Commission allow firms to submit a structured data file rather than filling in a web form); *see supra section V.C.2 (discussing the option to use custom XML-based data language).*

[753] *See, e.g.,* Semi-Annual Report to Congress Regarding Public and Internal Use of Machine-Readable Data for Corporate Disclosures (June 2024) at 4, *https://www.sec.gov/files/fdta-report-6-2024.pdf* (explaining that technical validation rules allow issuers to check for certain errors before the machine-readable data is submitted, which can streamline the compliance process by reducing Commission staff time that would otherwise be spent pinpointing and communicating the existence of technical errors to issuers, and by reducing issuer time that would otherwise be spent resolving such errors and resubmitting the machine-readable data file).

[754] *See, e.g.,* Joung W. Kim, Jee-Hae Lim, & Won Gyun No, *The Effect of First Wave Mandatory XBRL Reporting Across the Financial Information Environment,* 26 J. Info. Sys. 127, 127–53 (2012) (finding evidence that ''mandatory XBRL disclosure decreases information risk and information asymmetry in both general and uncertain information environments'').

[755] *See, e.g.,* N. Trentmann, ''Companies Adjust Earnings for Covid–19 Costs, But Are They Still a One-Time Expense?'', Wall St. J. (2020) (citing an XBRL research software provider as a source for the analysis described in the article); *Bloomberg Lists BSE XBRL Data, XBRL.org* (Mar. 17, 2019), *https://www.xbrl.org/news/bloomberg-lists-bse-xbrl-data/;* R. Hoitash & U. Hoitash, *Measuring Accounting Reporting Complexity with XBRL,* 93 Account. Rev. 259 (Jan. 1, 2018).

[756] *See, e.g.,* A. Lawrence, et al., *Investor Demand for Sell-Side Research,* 92 Account. Rev. 123 (Mar. 1, 2017) (finding ''the average retail investor appears to rely on analysts to interpret financial reporting information rather than read the actual filings''); *but see* S. Chi & D. Shanthikumar, *Do Retail Investors Use SEC Filings? Evidence from EDGAR Search,* (Nov. 8, 2018), available at *https://ssrn.com/abstract=3281234* (retrieved from SSRN Elsevier database) (finding ''retail investor trading, both buying and selling, is significantly related to EDGAR search for 10–K and 10–Q filings, more so than to Google search,'' especially for ''the most easily readable 10–K and 10–Q filings''); *see also* N. Brown, et al., *How do Disclosure Repetition and Interactivity Influence Investors' Judgments?,* 60 J. Account. Res. 1775 (Dec. 2022) (''Brown et al. iXBRL study'') (indicating that disclosure interactivity, which is promoted by Inline XBRL, may improve investors' direct processing of financial information).

[757] With respect to Commission use of XBRL data, *see infra* note 767. With respect to FDIC use of XBRL data, *see Meet Mark Montoya, Chief of Data Strategy, FDIC,* Xcential Co. (Sept. 29, 2021), *https://xcential.com/blog/meet-mark-montoya-chief-data-officer-fdic/* (noting in an interview with the FDIC's Chief Data Officer that XBRL requirements for quarterly bank call reports have facilitated FDIC staff analysis of the regulated banks); *see also Government Use of Data Standards—Conversation with the FDIC, XBRL US* (Sept. 2, 2020), *https://xbrl.us/news/regulator-video/* (noting in an interview with the FDIC's Chief Data Officer that, ''. . . Prior (to XBRL) the data that the (FDIC) examiners used to examine the banks was probably about 2–3 months old which is old data . . . (with XBRL) the data can be pulled down in real time''); *see also* Lizhong Hao & Mark J. Kohlbeck, *The Market Impact of Mandatory Interactive Data: Evidence from Bank Regulatory XBRL Filings,* 10 J. Emerging Tech. Acct. 41 (Dec. 2013) (finding that banks experienced a ''reduction in systematic risk in connection with filing their regulatory reports in XBRL'').

[758] *See, e.g.,* Semi-Annual Report to Congress Regarding Public and Internal Use of Machine-Readable Data for Corporate Disclosures (June 2024), *https://www.sec.gov/files/fdta-report-6-2024.pdf* (describing Commission staff use of machine-readable data, including XBRL data, across various Divisions and Offices); T. Knutson, *As XBRL in Financial Reporting Matures, Focus is on Accuracy,* CFO Dive (Feb. 25, 2020), *available at https://www.cfodive.com/news/xbrl-financial-reporting-accuracy/572948/.*

[759] As stated above in sections X.A and X.B, whether any filed material is confidential is determined pursuant to applicable law, including but not limited to the Freedom of Information Act and Commission rules governing requests for confidential treatment.

[760] *See* Elizabeth Blankespoor, *The Impact of Information Processing Costs on Firm Disclosure Choice: Evidence from the XBRL Mandate,* 57 J. Acct. Res. 919 (2019) (finding ''firms increase their quantitative footnote disclosures upon implementation of XBRL detailed tagging requirements designed to reduce information users' processing costs,'' and ''both regulatory and non-

have shown that XBRL requirements have increased firms' investment efficiency by decreasing information processing cost and improved effective decision-making by managers, effects that appear to be heightened for Inline XBRL requirements.[761]

XBRL requirements have also been observed to impact the timeliness and effectiveness of firms' disclosure preparation and related processes. For example, one study found XBRL to have decreased audited report lags, especially among firms with strong internal control systems and no prior XBRL reporting experience.[762] Other studies have found XBRL requirements to have improved the timeliness of financial reports, with such improvements limited to larger firms only.[763] For instance, one public company executive stated that XBRL facilitates his firm's disclosure preparation procedures by enabling efficient review of disclosures made by peer companies.[764] Increasing the timeliness and effectiveness of the auditing and disclosure process would improve the speed (and, with respect to enhanced auditing processes, confidence) with which users of the affected entities' disclosures (such as investors, analysts, and regulators) could assess and ultimately draw conclusions from, and act upon, the disclosed information.[765]

One commenter stated that the empirical evidence the Commission provided to justify the use of XBRL and XML was limited to a single study that does not analyze Inline XBRL. However, the discussion above cites multiple studies, not a single study, providing evidence of benefit from XBRL.[766] Further, while most of the cited studies discuss XBRL rather than Inline XBRL (presumably because the phase-in from XBRL requirements to Inline XBRL requirements for Commission filings was completed relatively recently, in 2021), two of the cited studies discuss Inline XBRL specifically.[767]

Applicability and Variability of Structured Data Benefits

The structured data benefits discussed above, while largely specific to public operating company financial statement disclosures, generally indicate that the structured data requirements under the rule amendments will facilitate the use and analysis of the information disclosed on the affected documents. One commenter agreed with this statement, stating that data processing is significantly faster with XBRL than with unstructured data types.[768] Several of the affected documents that are required to be structured in Inline XBRL—namely, Form X–17A–5 Part III, Form 17–H, Form 1, and Form CA–1—include financial statements that were not previously provided in a structured data language, but will be provided in a structured data language (specifically, Inline XBRL) under the rule amendments. The probability that, and extent to which, the observed effects can be extrapolated are thus likely greater for those affected documents than for the remaining affected documents, which do not contain financial statements.

In addition, unlike the public company financial statement information evaluated in the literature referenced above, several of the affected documents are submitted confidentially or are otherwise non-public, either in whole or in part. This includes Form 17–H, Form X–17A–19, Form X–17A–5 Part III (in part), Form CA–1 (in part), and the CCO reports.[769] The expected benefits of structuring non-public information will accrue to investors and markets indirectly, by enhancing the Commission's regulatory capabilities.[770] By contrast, the expected benefits of structuring public information will accrue directly to public users of the data (which could include investors and the previously discussed information intermediaries), as well as indirectly to investors and markets through the enhancement of the Commission's regulatory capabilities (and, where relevant, those of other regulators).

The benefits of structuring will also vary based on the number of entities in a particular population of reporting entities. As stated, one benefit of structured disclosure is the ability to run large-scale comparisons across reporting entities and across reporting periods. For those affected documents that have a small population of reporting entities, this benefit will be

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regulatory market participants play a role in monitoring firm disclosures,'' suggesting ''that the processing costs of market participants can be significant enough to impact firms' disclosure decisions''); *see also* Kim, Jeong-Bon, Kim, Joung W., &Lim, Jee-Hae, *Does XBRL Adoption Constrain Earnings Management? Early Evidence from Mandated U.S. Filers,* 36 Contemp. Acct. Res. 2610 (2019) (indicating that XBRL adoption ''constrains earnings management via discretionary accrual choices'').

[761] *See, e.g.,* Xin Cheng, et al., *How Does Information Processing Efficiency Relate to Investment Efficiency? Evidence from XBRL Adoption,* 35 J. Info. Sys. 1 (2021) (finding firms ''improve their investment efficiency after the adoption of XBRL,'' especially for firms that ''have inferior external monitoring, . . . operate in more uncertain information environments, . . . and have less readable financial reporting''); *see also* Hyun Woong (Daniel) Chang, et al., *The Effect of iXBRL Formatted Financial Statements on the Effectiveness of Managers' Decisions when Making Inter-Firm Comparisons,* 35 J. Info. Sys. 149 (2021) (''Chang et al. iXBRL study'') (finding ''iXBRL filings facilitate information search and information match by allowing users to view XBRL data in HTML filings,'' and ''managers make more (less) effective decisions when presented with financial information formatted in iXBRL (XBRL)'').

[762] *See* K. Amin, J. Daniel Eshleman, & C. (Qian) Feng, *The Effect of the SEC's XBRL Mandate on Audit Report Lags,* 32 Acct. Horiz. 1 (Mar. 1, 2018) (finding ''audit report lags decrease following the mandatory adoption of XBRL,'' with results ''concentrated among filers with strong internal control systems and no prior XBRL reporting experience'').

[763] *See, e.g.,* Hui Du & Kean Wu, *XBRL Mandate and Timeliness of Financial Reporting: Do XBRL Filings Take Longer?* 15 J. Emerg. Tech. Acct. 57 (2018) (finding decreased reporting lags for XBRL annual and quarterly filings compared to non-XBRL filings from accelerated and large accelerated filers, but not for non-accelerated filers); *see also* J. Zhou, *Does One Size Fit All? Evidence on XBRL Adoption and 10-K Filing Lag.* 60 Acct Fin. 3183 (Sept. 2020) (noting that 10–K filing lag decreased for all filers in the XBRL reporting period except smaller reporting companies, for which 10–K filing lag increased). However, these studies were based on XBRL filings that were made before the adoption of Inline XBRL requirements, which may facilitate the filing preparation process by including the machine-readable and human-readable data in the same disclosure document.

[764] *See* Olivia Berkman, *XBRL: What are the Benefits,* FEI Daily (Aug. 29, 2019), *https://www.financialexecutives.org/FEI-Daily/August-2019/XBRL-What-are-the-Benefits.aspx* (noting in an interview with a public company's chief financial officer that the company is able to ''search through XBRL filings to find similar companies within [its] industry that have had to present certain similar [disclosures] in the past,'' which has helped the company ''craft[ ] [its] disclosures to make sure that [the company is] complying with the spirit of GAAP and providing the information that [the company is] supposed to be providing'').

[765] *See* Proposing Release at 23946 (discussing the time lag between the date of receipt of a paper filing of a broker-dealer's annual reports until it is scanned and the public portion published on EDGAR, and the confidential portion available to Commission staff).

[766] *See supra* notes 763 to 765 and 769 to 772.

[767] *See* Brown et al. iXBRL study; Chang et al. iXBRL study.

[768] *See* XBRL Letter at 11.

[769] Additionally, the Commission does not automatically make public the information provided to it pursuant to Rule 15fi–3(c); however, the Commission may make the information available upon appropriate request (including requests made pursuant to the Freedom of Information Act) or otherwise as permitted under applicable law, subject to SBS Entities making appropriate requests for confidential treatment. *See supra* section IX.F. Whether any material is confidential is determined pursuant to applicable law, including but not limited to the Freedom of Information Act and Commission rules governing requests for confidential treatment. If the Commission makes the information provided pursuant to Rule 15fi–3(c) available, the information made available may not be in structured format.

[770] *See supra* sections II.D, IV.A, IV.B, V.A, and V.D. An example of a structured non-public disclosure form is Form PF, which registered investment advisers file with the Commission to disclose information regarding private funds under their management. *See* 17 CFR 275.204(b); Division of Investment Management: Electronic Filing of Form PF for Investment Advisers on PFRD, available at *https://www.sec.gov/divisions/investment/pfrd.shtml.*

limited largely (or, in the case of Form 15A, wholly) to the latter. For those affected documents that have a large population of reporting entities (such as Form X–17A–5 Part III, which is filed by over 3,000 entities), the benefits of efficient cross-entity comparisons will be much more relevant.[771] Similarly, the benefits of efficient access, retrieval, sorting, and filtering structured disclosures will be heightened for those affected documents generated in high volume (such as Form 19b–4(e) and Form X–17A–19) compared to those affected documents that the Commission receives in low volume (such as Form CA–1).[772]

Finally, the benefits of structuring data will vary based on the type of disclosures included in each affected document. Structured numerical disclosures lend themselves to mathematical functionality, such as the calculation of leverage or other ratios to assess potential exposure to insolvency or other risk. Structured textual disclosures lend themselves to period-over-period redline comparisons, targeted keyword searching, and more sophisticated sentiment analysis. The CCO report consists primarily of textual descriptions, so the latter benefit will be relevant for that document.[773] Other affected documents feature both numeric and textual disclosures, so both benefits will be relevant.

Types of Content and Associated Benefits in Structured Documents

Structured Document	Numeric Information (mathematical functionality applicable)	Textual Information (redline comparisons, targeted searches, sentiment analyses applicable)
Form X-17A-5 Part III	Yes	Yes
Form 17-H	Yes	Yes
Form CA-1	Yes	Yes
Form 1	Yes	Yes
Form 1-N (execution page only)	No	Yes
Form 15A (execution page only)	No	No
Rule 19b-4(e) Information	In some cases	No
Form X-17A-19	No	Yes
VDN	Yes	Yes
CCO report	In some cases	Yes

One commenter disagreed with the Commission's characterization of benefits for structuring the CCO report (as well as other unstructured, narrative-based reports such as the compliance and exemption sections of the annual audited report on Form X–17A–5 Part III).[774] According to this commenter, adding an Inline XBRL requirement for narrative reports will not facilitate analysis or comparison, because those reports do not contain standardized, easily comparable elements.[775] However, all narrative reports must include disclosure responsive to applicable disclosure requirements set forth in the Commission's rules and regulations (*e.g.,* the disclosure requirements set forth in the subparagraphs of Rule 15fk–1(c)(2)(i) under the Exchange Act). While there may be variation on the particulars on how different filers or submitters respond to those requirements, the Inline XBRL requirement will facilitate analysis by enabling efficient assessment of such variations, and by enabling efficient comparisons of a single filer or submitter's narrative disclosure over various time periods, allowing the data user to determine how that filer's or submitter's disclosure has evolved over time.

The same commenter also questioned why the Commission cited sentiment analysis as a benefit of Inline XBRL requirements.[776] According to the commenter, sentiment analysis is typically used for marketing purposes, and thus it was not clear why such analysis would be necessary or beneficial for narrative reports. However, sentiment analysis is often used for purposes beyond marketing, including by third parties to assess regulatory disclosures, such as disclosures in Commission filings in

[771] *See supra* section IX.C.9.

[772] *See supra* sections IX.D.5, IX.D.6, and IX.D.11.

[773] *See* 17 CFR 240.15fk–1(c)(2)(i). SBS Entities may, in providing the narrative descriptions required by Rule 15Fk–1(c)(2)(i), include numeric values nested within such narrative descriptions.

[774] *See* SIFMA 5/22/2023 Letter at 7.

[775] *See id.*

[776] *See id.*

order to assess the usefulness of disclosures to end users in the market.[777] Thus, the sentiment analysis benefit is applicable to the narrative reports that are structured in Inline XBRL under the rule amendments.

For Rule 19b–4(e), numeric disclosures are required only when the disclosure of position limits for new derivative securities products is applicable.[778] For VDNs, SBS Entities must notify the Commission of any valuation disputes in excess of $20,000,000 if not resolved within three or five business days, depending on the counterparty.[779] SBS Entities are provided flexibility to submit the required information.[780] For CCO reports, while Rule 15fk–1(c) does not expressly call for numeric values, an SBS Entity could include numeric values nested within textual responses, such as by including dollar amounts within the description of financial, managerial, operational, and staffing resources set aside for compliance with the Exchange Act.[781]

For Form 15A, its execution page (*i.e.,* the portion of new Form 15A that would precede section I) will include a series of structured checkboxes to indicate the basis for filing the Form, and the reporting period to which the Form applies. Structured checkboxes and pick lists are more relevant to the filtering and sorting benefits enabled by structured data requirements. For example, structuring the checkboxes on the Form 15A execution page will enable a data user to retrieve only those Form 15As that are current supplements to registration reported pursuant to Rule 15aa–2(b) of the Exchange Act, and further filter those results to only those Form 15A filings that include a change to Exhibit C (list of members).

The Commission is requiring a specific structured data language for each Structured Document, rather than leaving the structured data language requirement open-ended (*i.e.,* requiring only that the Structured Document be provided in a structured, machine-readable data language). Specifying a single structured data language that a filer or submitter must use for each Structured Document will benefit users of the disclosed information, including investors, market participants, other filers or submitters, information intermediaries, and the Commission, because it will help ensure the disclosures are provided in a uniform structured data language that is most suitable for the document in question, and will prevent a potential coordination failure that could occur if different respondents chose to provide inputs in different data languages.

One commenter disagreed with requiring a specific structured data language for each Structured Document, stating that the Commission should instead adopt a principles-based approach where affected filers or submitters are required to provide disclosures in a machine-readable format.[782] According to this commenter, such an approach would facilitate data analysis without imposing burdensome and ambiguous requirements on affected filers or submitters. However, adopting a principles-based approach (*i.e.,* an open-ended data language requirement) to data structuring would have created issues for users of the data. Specifically, such an approach would have allowed different filers or submitters of the same document to provide their disclosures in different data languages. In such instances, data users such as Commission staff and market participants would have been unable to incorporate disclosures from filers or submitters using one data language into the same datasets and applications as disclosures of other filers or submitters using different data languages without undertaking data conversion processes that are frequently burdensome and imprecise. This may have hindered investors, the Commission, and market participants from efficiently comparing disclosures across the complete set of entities within a given filer population and could therefore have dampened the benefits that would otherwise accrue from requiring the disclosures to be machine-readable. Instead, specifying the data language to be used will likely increase the probability of realizing the anticipated benefits of machine-readability for users of the Structured Documents.

2. Costs

The rule amendments alter the way the affected entities provide the affected documents, specifically by requiring electronic submission or posting of the affected documents, and by requiring most of the content of the affected documents to be provided in a structured data language. The affected entities already are required to prepare and submit the affected documents with the Commission pursuant to Exchange Act rules that currently govern each category of affected entity.[783] Thus, we generally do not expect the affected entities to incur incremental costs associated with preparing (*e.g.,* collecting, drafting, reviewing) the information required to be disclosed in the affected documents prior to filing or posting under the rule amendments.[784] Rather, we expect certain entities to incur incremental costs associated with structuring the prepared information.

a. Electronic Submission and Posting; Clarifying Changes to the FOCUS Report

As discussed above, a significant number of the entities subject to the rule amendments already have experience with EDGAR due to other reporting obligations and thus are not expected to incur EDGAR-related costs incremental to the rule amendments. Entities that use EDGAR for purposes of complying with reporting obligations under existing rules generally are not expected to incur additional EDGAR access costs due to the rule amendments.[785] Reporting entities that do not have experience with EDGAR may incur initial compliance burdens, including the one-time burden associated with filing a Form ID for the first time to obtain the access codes needed to submit an application on the Commission's EDGAR system.[786] One commenter agreed with our assessment, stating that there would be an initial fixed cost to electronic submission posting, but that ongoing additional costs would be minimal.[787] The Commission estimates that the cost for entities that do not have experience with EDGAR will be around $5,000 on a one-time basis to become familiar with the EDGAR system for the purposes of filing for Rules 17a–5, 18a–7, and 17a–12.[788]

Due to the widespread use of the internet, the cost of establishing and maintaining internet access is not

[777] *See, e.g.* H. Kim, E. Lee, & D. Yoo, *Do SEC Filings Indicate Any Trends? Evidence from the Sentiment Distribution of Forms 10–K and 10–Q with FinBERT,* 57 **DATA TECH. & APPLICATIONS** 293 *(Apr. 25, 2023); see generally,* Yong Chen et al., *Sentiment Trading and Hedge Fund Returns,* 76 J. Fin. 2001 (Apr. 8, 2011).

[778] *See* Item 9 of Form 19b–4(e).

[779] *See* 17 CFR 240.15fi–3(c)(1). *See also* 17 CFR 240.15fi–3(c)(2) regarding required amendments.

[780] *See supra* section V.C.

[781] *See* 17 CFR 240.15fk–1(c)(2)(i)(E).

[782] *See* SIFMA 5/22/2023 Letter at 6.

[783] ANE Exception Notice withdrawals currently are not required. However, a Registered Entity seeking withdrawal could send a request to a designated electronic mailbox. *See supra* note 291 and accompanying text, and section IX.D.13.

[784] A subset of security-based swap broker-dealers would incur additional costs associated with filing, due to the FOCUS report amendments that would require them to file information that under the baseline they currently do not file.

[785] If reporting entities with EDGAR experience require time to switch the affected documents from paper to EDGAR, they may incur an additional initial cost.

[786] *See* 17 CFR 232.10(b).

[787] *See* XBRL Letter at 3 and 7.

[788] *See supra* section IX.D.9. The one-time cost is estimated to require sixteen hours of labor from a programmer. 16 hours × $316 per hour = $5,056.

expected to stem from the amendments. The Commission preliminarily believes that the costs associated with providing materials pursuant to Rule 17a–22 by registered clearing agencies on websites, and the costs associated with posting information currently required on Form 19b–4(e) by SROs, in addition to the reduced timeframe for compliance, is likely not to add significant costs to a registered clearing agency's 17a–22 obligations or an SRO's 19b–4(e) obligations.

Several amendments related to FOCUS Reports could impose burdens on market participants. The amendments to FOCUS Report Part II are expected to result in an initial burden of $2,130 on each Part II filer so firms can familiarize themselves with the amendments to FOCUS Report Part II.[789] These amendments are expected to either have no impact on or reduce the ongoing burden on most filers, because they will reduce questions about where and how to report items on the form. However, because the amendments require stand-alone swap dealers and stand-alone introducing brokers to complete a new section of FOCUS Report Part II that these types of firms were not previously required to complete (*i.e.,* Computation of CFTC Minimum Capital Requirements), these amendments are likely to result in an ongoing annual burden of $426 hour per stand-alone swap dealer or stand-alone introducing broker.[790]

The amendments to Part IIC are expected to result in an initial burden of five hours on each bank SBS Entity so that firms can compare the revised FOCUS Report Part IIC with FFIEC Form 031.[791] However, these amendments are expected to either have no impact on or reduce the ongoing burden on bank SBS Entities, because they will reduce questions about how to complete FOCUS Report Part IIC consistently with FFIEC Form 031.

The amendment to signature requirements for the FOCUS Report is expected to result in an initial burden of $426 on each filer so that the firm can review the standards for an electronic signature on the FOCUS Report Part II, IIA, or IIC, as applicable.[792] However, this amendment is expected to either have no impact on or reduce the ongoing burden on FOCUS Report filers, because they will not be required to furnish as many signatures as before the amendment, and it may be easier to prepare electronic signatures rather than manual signatures since firms will already be familiar with the process and can easily obtain these signatures while working remotely.

The amendment to OTC derivatives dealer requirements is expected to result in an initial burden of $4,740 on each OTC derivatives dealer so that the firm can familiarize itself with the SEC eFOCUS system.[793] However, this amendment is expected to either have no impact on or reduce the ongoing burden on OTC derivatives dealers, because filing the FOCUS Report electronically is an automated process as compared to filing by paper. In addition, OTC derivatives dealers are required to be affiliated with a broker-dealer, which means that OTC derivatives dealers' operational staff already are familiar with the FINRA eFOCUS system's interface, and can use the same preexisting templates, software, and procedures currently used by the broker-dealer to file FOCUS Reports on the FINRA system.

b. Structured Data

Certain structured data requirements under the amendments will impose additional compliance costs on affected entities. Specifically, the Inline XBRL requirements for Form 1, Form CA–1, Form X–17A–5 Part III and related annual filings, Form 17–H, and the CCO reports (or home country reports submitted pursuant to a substituted compliance order under Exchange Act Rule 3a71–6) will result in additional compliance costs, both initial and ongoing, for the SROs, broker-dealers (including OTC derivatives dealers), and SBS Entities filing or submitting those documents relative to the baseline, because those entities will be newly required to apply Inline XBRL tags to the documents before filing or submitting them to the Commission (or pay a third-party tagging service provider to do so). The Commission does not expect the requirements to provide Form X–17A–19, the execution pages of the Covered SRO Forms, the facing page of Form X–17A–5 Part III, the facing page and Part II of Form 17–H, and the VDNs to the Commission using custom XML-based data languages will impose similar structured data implementation costs on the SROs, broker-dealers, and SBS Entities that will be subject to those requirements. For the custom XML requirements on EDGAR filings, EDGAR will provide filers or submitters with the option of using a fillable web form that will convert inputted disclosures into the relevant custom XML.[794] Other than the exchanges and clearing agencies filing Form 1 and Form CA–1, respectively, the Commission expects these entities to input their disclosures into the fillable EDGAR web form, and thus not be required to incur compliance costs associated with structuring disclosures in custom XML data languages.

By contrast, the Commission expects exchanges and clearing agencies, which will be subject to more extensive custom XML disclosure requirements as a result of the rule amendments, to have the requisite sophistication to encode their Exhibit disclosures in custom XML and will submit the custom XML Exhibits to EDGAR directly rather than manually completing lengthy fillable forms to be converted into custom XML documents.[795] This will cause exchanges and clearing agencies to incur implementation costs associated with integrating any new or updated custom XML schemas into their existing data systems.[796] Nonetheless, exchanges and clearing agencies may find direct submission in custom XML beneficial, because it allows for greater automation in the process of submitting data that is already structured directly to EDGAR, and removes the need for the final manual step of converting structured data into unstructured information to be typed into fillable web fields.

With respect to the requirement for SROs to post Rule 19b–4(e) information using the custom XML schema for this information (such schema will be posted on the Commission's website), the Commission expects that the SROs will incur higher implementation costs than those affected entities that are subject to EDGAR custom XML requirements, because SROs will need to encode the posted information in accordance with the schema rather than using a fillable web form on EDGAR. This will also be the case for any entities that choose to submit EDGAR documents directly in the relevant custom XML data language rather than use the fillable form that EDGAR provides.

Multiple commenters generally agreed that the structured data requirements

[789] 5 hours × $426 per hour (compliance attorney) = $2,130.

[790] 1 hour × $426 per hour (compliance attorney) = $426.

[791] *See supra* note 658 and accompanying text,

[792] 1 hour × $426 per hour (compliance attorney) = $426. *See supra* note 659 and accompanying text.

[793] 15 hours × $316 per hour (programmer) = $4,740.

[794] *See* EDGAR Filer Manual, Volume II, Chapter 8. As discussed in section V.C, *supra,* one commenter stated that the Commission should allow SBS Entities to submit a structured data file for the VDN (rather than completing a fillable web form) to preserve efficiencies arising from firms' existing systems. *See* SIFMA 5/22/2023 Letter at 11. Under the rule amendments, as under the proposal, SBS Entities will have this option.

[795] *See supra* sections II.A.3, II.D.4, and VII.A.

[796] *See infra* text accompanying notes 844 and 852 for related cost estimates.

under the rule amendments will impose additional costs on affected entities, but disagreed with the Commission's estimates on the specific nature and magnitude of such costs.[797] A commenter, in stating that the proposed structured data cost estimates were too low, stated that using XBRL and XML for the affected documents would require firms to expend substantial resources and undergo fundamental operational changes.[798] According to the commenter, the Inline XBRL and custom XML requirements would, in particular, require firms to: hire additional personnel that are proficient in Inline XBRL and custom XML; develop processes for converting the relevant data into Inline XBRL and custom XML and uploading that data to EDGAR; train new and existing personnel on such processes; and overhaul systems and operations to integrate the Inline XBRL/custom XML production and processing.[799] The commenter also conveyed one firm's estimates that it would cost $20,000 to $40,000 per year per registrant to retain an XBRL tagging service provider and $20,000 to $30,000 per year per entity to purchase the tagging software.

As explained in the sections IV.A and VII.A above, the Commission disagrees with the commenter that the structured data requirements will require firms to undergo all the changes the commenter described. For the custom XML requirements, most firms will comply with those requirements by completing fillable web forms on EDGAR; other firms will have the requisite sophistication to encode disclosures using custom XML schemas without the need for substantial additional training or hiring of personnel. For Inline XBRL requirements, firms that outsource compliance to a third-party service provider will not need to hire additional personnel proficient in XBRL and XML, develop processes for converting data into XBRL and XML and uploading that data to EDGAR, train new and existing personnel on such processes, or overhaul systems and operations to integrate XBRL or XML production, because these tasks will have been performed by the third-party service provider, and not by the firm itself. Firms that instead comply with structured data requirements internally will not need to hire additional personnel that are proficient in XBRL, because these firms can license software tools that allow staff without XBRL proficiency to apply Inline XBRL tags to regulatory disclosures without any need to overhaul the firm's systems or operations. These firms will, however, likely need to implement processes for the use of such software tools and train staff on these processes. The Commission includes these process implementation and training costs in its estimates of initial structured data costs and burdens.[800]

As to the magnitude of the structured data compliance costs, the Commission estimated at proposal, and continues to estimate for the rule amendments, that certain affected filers or submitters (specifically, clearing agencies and exchanges not affiliated with public companies) will incur costs of $20,000 to $30,000 to structure the Structured Documents, but that other affected filers or submitters will incur lower costs.[801] These estimates are based on considerations such as: (i) prior surveys regarding structured data costs; (ii) publicly available information on XBRL tagging service and software pricing; (iii) the expected extent and complexity of disclosures to be structured in each type of Structured Document; (iv) certain affected entities' affiliations with companies that have experience structuring disclosures; and (v) for custom XML requirements, the availability of a fillable web form option that enables affected filers or submitters to, at their option, forgo structuring their disclosures. The Commission provides further detail on these factors later in this section. None of the aforementioned considerations has changed or lost relevance since the amended rules were proposed in March 2023.

The Commission is, however, adjusting the extent to which the structured data cost estimates reflect reduced burdens for filers or submitters affiliated with reporting companies that have existing Inline XBRL experience. In the proposing release, the Commission requested comment on whether it is reasonable to assume that affected entities with affiliates subject to Inline XBRL requirements would be able to leverage the Inline XBRL compliance software licenses and/or service agreements, as well as the Inline XBRL tagging processes and experience, of those affiliates.[802] In response, one commenter stated that this is dependent on the contractual arrangements that the affiliates may have with their providers, and with the internal staffing structure for each company.[803] The Commission is therefore adjusting its structured data cost estimates to reflect that the extent to which affiliates of entities subject to Inline XBRL requirements may be able to leverage the Inline XBRL tagging processes, experience, software licenses, or service agreements of those affiliates could be limited.[804] The Commission is also making two revisions to the estimates of initial implementation costs related to structured data requirements; those initial implementation cost estimates, including the revisions thereto, are discussed later in this section.

Another commenter, whose letter addressed only the proposals involving Rule 17a–5 under the Exchange Act and the FOCUS report, stated that requiring XBRL structuring will result in significant burdens for most broker-dealers.[805] The Commission agrees that the Inline XBRL requirements under the rule amendments will impose costs on broker-dealers, and estimates the extent of those costs below. As those estimates indicate, the Commission continues to expect the compliance costs for broker-dealers will vary based on factors such as the size of the broker-dealer and the extent to which the broker-dealer has experience (or has affiliates with experience) structuring their data.

Surveys on Structured Data Costs

Various XBRL and Inline XBRL preparation solutions have been developed and used by operating companies and investment companies to fulfill their existing structuring

[797] *See* Integrated Solutions Letter; SIFMA 5/22/2023 Letter.

[798] *See* SIFMA 5/22/2023 Letter at 4.

[799] *See id.* at 5.

[800] Specific cost ranges for initial structured data implementation costs are set forth later in this section (X.C.2.b).

[801] As discussed in further detail later in this section, the Commission estimates clearing agencies will incur approximately $9,650 to $28,910 to structure Form CA–1 in the initial year of compliance, and $6,430 to $19,270 to structure Form CA–1 in subsequent years. The Commission expects exchanges unaffiliated with public reporting companies will incur approximately $10,140 to $30,380 to structure Form 1 in the initial year of compliance, and approximately $6,760 to $20,250 to structure Form 1 in subsequent years.

[802] *See* Proposing Release at 24002.

[803] *See* XBRL Letter at 11.

[804] Specifically, as detailed in the subsequent discussions of estimated cost ranges for each affected document, the Commission is applying the cost reductions to only half of all filers or submitters affiliated with reporting companies.

[805] *See* Integrated Solutions Letter at 1. The commenter also suggested that, should the Commission nonetheless include a structuring requirement for Form X–17A–5 Part III under the rule amendments, the filing period for annual financial statement filers be extended by fifteen days to allow for XBRL encoding to be accomplished. *See id.* at 4. As the Commission explains in Section VII.A of this release, *because the* infrastructure for compliance with XBRL requirements in Commission filings (including the market for compliance software and service providers) has been in place for more than a decade, it will not be difficult for broker-dealers to comply with Inline XBRL tagging requirements within the existing filing period for Form X–17A–5 Part III. *See supra* section VII.A.

requirements under the Commission's rules. These existing requirements include multiple types of data, including numerical data in the context of financial statements, numerical data in the context of tables (along with the tables themselves), simple text strings, longer textual narratives, numerical data nested within textual narratives, and checkboxes.[806]

With respect to the magnitude of Inline XBRL compliance costs, an American Institute of Certified Public Accountants (''AICPA'') survey of XBRL pricing data for 1,032 public operating companies with $75 million or less in market capitalization in 2018 found an average cost of $5,850 per year, a median cost of $2,500 per year, and a maximum cost of $51,500 per year for fully outsourced XBRL creation and filing.[807] These figures represent tagging costs over an entire year, which typically encompasses the Inline XBRL structuring of financial statements each quarter. A separate survey of 139 Nasdaq-listed issuers in 2018 found higher XBRL compliance costs, including an average XBRL compliance cost of $20,000 per quarter, a median XBRL compliance cost of $7,500 per quarter, and a maximum XBRL compliance cost of $350,000 per quarter in XBRL costs per quarter.[808] Unlike the AICPA survey, the Nasdaq survey was not limited to smaller reporting companies (*i.e.,* companies with $75 million or less in market capitalization), nor did it assess trends in compliance costs over time.

This observed variance in XBRL and Inline XBRL compliance costs is likely attributable to variance in the number of discrete disclosures (including numbers, blocks of narrative text, checkboxes, etc.) contained in a tagged document, as well as the complexity of the specific disclosures to be tagged. Larger, more organizationally complex entities are likely to have more detailed and complex financial statements (including footnotes and schedules), and thus have more tags that they will need to apply to their documents, typically resulting in higher compliance costs (as described in further detail below in this section).[809] To that end, a random sample of annual reports on Form 10–K filed by Nasdaq-listed companies for fiscal year 2023 with a parallel sample for companies with a public float of $75 million or less showed approximately 60 percent more tagged Inline XBRL facts in the Nasdaq-listed sample.[810]

One commenter stated that the number of required tags in a Structured Document will be a key consideration in determining the cost of preparing reports in Inline XBRL, and that the number of required tags depends on the granularity of the taxonomy.[811] However, the presence of tags in a taxonomy does not dictate the inclusion of each tag in every Inline XBRL document; rather, an XBRL taxonomy provides a glossary of tags from which a filer or submitter can select when tagging a document in Inline XBRL. The US–GAAP Taxonomy, for example, contains approximately 17,000 tags, but public operating companies filing a report use only the subset that is applicable to the filing. The number of XBRL tags to be used, and thus (in many cases) the cost of structuring an XBRL document, depends on the extensiveness and complexity of the substantive disclosure a filer provides in response to legal disclosure requirements, and not on the particulars of the taxonomy created to implement the technical process of tagging those substantive disclosures.

Applicability and Variability of Structured Data Costs

The affected documents that the Commission is requiring to be structured in Inline XBRL under the rule amendments consist of the same data types as the documents that are currently required to be structured in Inline XBRL (*e.g.,* numerical data in the context of financial statements, numerical data in the context of tables (along with the tables themselves), simple text strings, longer textual narratives, numerical data nested within textual narratives, and checkboxes). Because Inline XBRL tagging software has already been developed to provide this functionality and is already in use by public reporting companies to fulfill Inline XBRL requirements, the Commission expects that vendors will update their Inline XBRL tagging software to accommodate the Inline XBRL requirements for Form 1, Form CA–1, Form X–17A–5 Part III, Form 17–H, and the CCO report. Some filers or submitters of these documents were not previously subject to Inline XBRL requirements, so it is unlikely that they previously used the Inline XBRL compliance products offered by these vendors. However, as discussed further below in this section, some filers or submitters are affiliated with public reporting companies subject to existing Inline XBRL requirements, and will potentially be able to leverage their affiliates' Inline XBRL compliance software licenses or service agreements and experience in complying with the Inline XBRL requirements.

One commenter stated that the ability of filers or submitters to leverage the experience of their affiliates is dependent on the contractual arrangements the affiliate may have with its tagging compliance software or service providers, and on the internal staffing structure of the affiliate.[812] Another commenter stated that the burden of structuring filings will be greater for firms that are not affiliates of public reporting companies, and that the XBRL resources that public filers have developed for Form 10–K and 10–Q filings would be minimally useful for other reports such as CCO reports, because those reports rely on different systems, personnel, divisions, processes, and timelines, and would be subject to different taxonomies.[813]

While the Commission agrees that the Structured Documents (including CCO reports) will be, at least in part, subject to different taxonomies than those used for tagging disclosures in Forms 10–K and 10–Q, the Commission disagrees that existing resources for tagging public companies in Inline XBRL would be minimally useful. As discussed above, while the specific disclosures in the Structured Documents differ from the disclosures in existing XBRL filings, the content type (*e.g.,* tables, numeric values, text blocks) of the disclosures in

[806] For example, an operating company's annual report on Form 10–K includes iXBRL-tagged checkboxes on the cover page, iXBRL-tagged company name on the cover page (text string), iXBRL-tagged numbers on the balance sheet (face of the financial statement), iXBRL-tagged tables and numbers therein in the financial statement footnotes, and iXBRL-tagged textual narratives and numbers therein, also in the financial statement footnotes.

[807] *See* AICPA, *XBRL Costs for Small Companies Have Declined 45% since 2014* (2018), *available at https://us.aicpa.org/content/dam/aicpa/interestareas/frc/accountingfinancialreporting/xbrl/downloadabledocuments/xbrl-costs-for-small-companies.pdf*. As discussed below in this section, the population of affected filers or submitters most analogous in size to the companies sampled here are certain registered broker-dealers.

[808] *See* Letter from Nasdaq, Inc. (Mar. 21, 2019), Request for Comment on Earnings Releases and Quarterly Reports, Release No. 33–10588 (Dec. 18, 2018), 83 FR 65601 (Dec. 21, 2018). Like the above-cited AICPA survey, this survey was limited to operating companies. In addition, both surveys were conducted before the transition from XBRL to Inline XBRL and before the implementation of cover page tagging requirements for periodic reports.

[809] *See, e.g.,* Bok Baik, et al., *Organizational Complexity, Financial Reporting Complexity, and Firms' Information Environment* (Mar. 31, 2023), *available at https://ssrn.com/abstract=4413814* (retrieved from SSRN Elsevier database).

[810] Targeted samples were obtained using data from Inline XBRL EDGAR filings through the Commission's internal Financial Statement Query Viewer tool. Tagged fact counts were obtained by analyzing Inline XBRL data filed in EDGAR.

[811] *See* SIFMA 5/22/2023 Letter at 5.

[812] *See* XBRL Letter at 11.

[813] *See* SIFMA 5/22/2023 Letter at 4.

the Structured Documents is the same as the content type of the disclosures in existing XBRL filings. Existing XBRL compliance tools and processes will therefore be relevant to the Structured Documents, although they will need to be updated to import newly developed and applicable taxonomies.

The Commission expects the compliance costs associated with the structured data requirements, as adjusted for inflation, will likely decrease over time. Affected entities will likely comply with structuring requirements more efficiently after gaining experience over repeated filings, though such an effect will likely be diminished for affected entities that have pre-existing experience structuring similar data in other documents. Third-party vendors of structured data compliance software or services may decrease the prices of their products over time; the XBRL compliance costs reported in the 2018 AICPA survey of XBRL pricing data for smaller operating companies reflect such a trend, as they represented a 45% decline in average cost and a 69% decline in median cost from 2014.[814]

The Commission expects the direct relationship between filer size and compliance costs described earlier in this section will apply to Inline XBRL compliance costs that arise under the rule amendments, and will be particularly relevant to Form X–17A–5 Part III filers (which include broker-dealers—including OTC derivatives dealers—and non-bank SBS Entities) for two reasons. First, like public operating companies, Form X–17A–5 Part III filers will be tagging financial statements (including footnotes and schedules) in Inline XBRL under the rule amendments.[815] Second, like public operating companies, Form X–17A–5 Part III filers vary widely in size. For example, on December 31, 2023, approximately 300 broker-dealers reported over $100 million in total assets, while approximately 1,600 broker-dealers reported less than $1 million in total assets.[816] Thus, as discussed in further detail later in this section, the Commission expects the Inline XBRL compliance costs for Form X–17A–5 Part III will vary inversely with size, as has been observed for public operating companies.[817]

The Commission expects the correlation between entity size and tagging cost to be less relevant to the other populations of entities that will be subject to Inline XBRL requirements under the rule amendments, because those populations are more limited in number and in the variation of size and complexity across entities within those populations. For example, Form CA–1 is filed by clearing agencies, including registered and exempt clearing agencies; there were 11 such entities in operation as of December 31, 2023.[818] Form 1 is filed by national securities exchanges, of which there were 24 as of December 31, 2023 (and by exempt exchanges, of which there were none as of December 31, 2023).[819] The CCO report is submitted by SBS Entities, of which there were 53 as of June 21, 2024.[820]

Some entities that will file or submit the documents to be structured in Inline XBRL under the rule amendments may be affiliated with entities that are subject to Inline XBRL requirements in other filings. For example, as of December 31, 2023, 17 of the 24 national securities exchanges were affiliated with public companies that file financial statements and cover page information in EDGAR in Inline XBRL.[821] In addition, of the largest 20 broker-dealers by asset size as of December 31, 2023, 19 were affiliated with public companies that file financial statement and cover page information in Inline XBRL on EDGAR.[822] As discussed above, to the extent that an affected entity shares compliance systems with an affiliated company, or can otherwise leverage the affiliated company's processes, licenses, service agreements, and/or experience in complying with Inline XBRL requirements, the affected entity's compliance costs incurred will likely be mitigated in part.[823]

As discussed above, the Commission is requiring specific structured data languages for each Structured Document, rather than leaving the structured data language requirement open-ended (*i.e.,* requiring only that the Structured Document be provided in a structured, machine-readable data language). A cost associated with this approach is that it will constrain the flexibility that filers or submitters of a Structured Document would otherwise have had in preparing the Structured Document. For instance, some filers or submitters of a custom XML document may have already been using Inline XBRL to structure similar data for internal business purposes, such as through the use of ERP systems, and may therefore have preferred to use Inline XBRL rather than the required custom XML data language for that document.[824] In addition, requiring a specific structured data language for each Structured Document may extend the amount of time it would take were the Commission to change the particular structured data language to be used, such as to accommodate any future developments in which newly developed structured data languages prove to be more apt for the disclosures in question.

For Form 1, Form CA–1, Form X–17A–5 Part III, Form 17–H, and the CCO reports, the approach of requiring Inline XBRL for some parts of the document and custom XML for other parts of the document will entail drawbacks for users of the information (including Commission staff and market participants). Specifically, data users will be unable to incorporate the Inline XBRL disclosures on a given filing or submission into the same datasets and applications as the custom XML disclosures on that filing or submission, and will be unable to run analyses that incorporate both types of information without undertaking data conversion processes that are frequently burdensome and imprecise. Similarly, any technical validations programmed into EDGAR will be unable to check for any inappropriate inconsistencies between disclosures on Inline XBRL portions and disclosures on custom XML portions of a given filing, thus reducing the benefit of improved data quality that will likely result from structured data requirements.

Structured Data Cost Estimates: Form X–17A–5 Part III and Form 17–H

With respect to specific estimated cost ranges for Form X–17A–5 Part III and Form 17–H filers to structure their filings, the Commission expects the aforementioned AICPA study, which

[814] *See supra* note 806.

[815] In addition to financial statements and footnotes, Form X–17A–5 Part III filers will also need to tag their auditor's reports and other annual reports in Inline XBRL under the rule amendments. By contrast, public operating companies only need to tag auditor identification information in their auditor's reports. *See* Exchange Act Release No. 93701 (Dec. 2, 2021), 86 FR 70027, 70031 (Dec. 9, 2021).

[816] We derive the broker-dealer financial data in this economic analysis from FOCUS Reports that broker-dealers filed through FINRA's eFOCUS system for the fiscal period ending Dec. 31, 2023. *See supra* section X.B.3.

[817] *See supra* notes 815 and 816 accompanying text for additional detail on this observed correlation.

[818] *See supra* section IX.C.3.

[819] *See supra* section IX.C.1.

[820] *See supra* section IX.C.15.

[821] *See* Commission, ''Self-Regulatory Organization Rulemaking,'' *available at https://www.sec.gov/rules/sro.shtml (last visited June 6, 2024).*

[822] This data is derived from FOCUS Reports filed through FINRA's eFOCUS system for the fourth quarter of 2023. *See supra* section X.B.3.

[823] *See supra* section IX.D.2.

[824] *See supra* section X.B.1 (discussing the prevalence of XBRL integration in ERP systems).

surveyed XBRL tagging price data across roughly 1,000 small reporting companies and found in 2018 a median and average annual cost of XBRL filing of $2,500 and $5,850, respectively, will likely be relevant to the majority of Form X–17A–5 Part III filers. In 2017, the 1,000 smallest reporting companies by asset size reported total assets of approximately $8 million or less. As of December 31, 2023, approximately 75% of Form X–17A–5 Part III filers fell within that $8 million total asset size threshold. For these smaller Form X–17A–5 Part III filers, the Commission estimates the approximate median cost of tagging financial statements on Form X–17A–5 Part III by using the median annual cost estimate from the AICPA survey ($2,500) and dividing it by four, because the small reporting companies in the AICPA study prepared tagged financial statements on a quarterly rather than annual basis. Using the resulting figure ($625) as a midpoint and establishing lower and upper bounds at 50% of the midpoint, the Commission estimates smaller Form X–17A–5 Part III filers will incur an approximate median per filing cost of $310 to $940 to structure their financial statements in Inline XBRL.[825]

For the larger Form X–17A–5 Part III filers (*i.e.,* those with total assets greater than $8 million), the Commission estimates that the higher median compliance cost from the Nasdaq survey ($7,500 per quarter) will be a more suitable approximation. Using that median compliance cost as a midpoint yields an estimate of $3,750 to $11,250 per filing for larger Form X–17A–5 Part III filers to structure their financial statements.

Some larger Form X–17A–5 Part III filers are subsidiaries of, or otherwise affiliated with, public reporting companies that are already required to tag their financial statements.[826] In the proposing release, the Commission stated its expectation that these filers will incur significantly lower costs to tag their financial statements than other large Form X–17A–5 Part III filers, because they will likely be able to leverage the software licenses and/or service agreements and the Inline XBRL tagging processes and experience of their affiliates. Consequently, the Commission estimated these Form X–17A–5 Part III filers will incur 25% of the tagging cost of other large Form X–17A–5 Part III filers, resulting in an annual estimated cost of $940 to $2,820 to tag their financial statements on Form X–17A–5 Part III. As discussed earlier in this section, the Commission is adjusting its structured data cost estimates to reflect that the extent to which affiliates of entities subject to Inline XBRL requirements may be able to leverage the Inline XBRL tagging processes, experience, software licenses, or service agreements of those affiliates could be limited. With respect to Form X–17A–5 Part III, rather than estimating all 226 broker-dealers affiliated with public reporting companies will incur the lower estimated cost of $940 to $2,820 to tag their financial statements on Form X–17A–5 Part III, the Commission is now estimating that only half, or 113, of those affiliated broker-dealers will incur reduced structured data costs, with the other half incurring the higher estimated cost of $3,750 to $11,250.

In addition to the financial statements, footnotes, and schedules, Form X–17A–5 Part III also requires a series of reports (including accountant's reports, compliance reports, exemption reports, and supplemental reports). Form X–17A–5 Part III filers are now required to tag these reports in Inline XBRL. Typically, these reports consist of a short series of narrative text blocks with limited nested details, so tagging them in Inline XBRL will likely cost significantly less than tagging the financial statements and schedules in Inline XBRL will cost.[827] The Commission therefore estimates the approximate cost of tagging these reports will amount to 5% of the cost to tag financial statements and schedules, yielding a total estimated Inline XBRL tagging cost per filing of approximately $330 to $990 for smaller Form X–17A–5 Part III filers; $3,940 to $11,820 for larger Form X–17A–5 Part III filers that are not affiliated with public reporting companies, and $990 to $2,960 for larger Form X–17A–5 Part III filers that are affiliated with public reporting companies.[828]

[825] The Commission rounds the estimated structured data cost ranges in this section to the nearest $10 because they represent approximations rather than exact costs. The estimated cost ranges in this section encompass internal time costs for preparing the structured reports (*e.g.,* applying the relevant tag from the XBRL taxonomy or custom XML schema to the relevant disclosure) and external monetary costs (*e.g.,* licensing structured data compliance software and/or services from third-party vendors). For annualized population-wide corollaries to the structured data cost estimates in this section, *see supra* section IX.D.

[826] The Commission has identified 226 such broker-dealers, including 19 of the largest 20 broker-dealers by asset size, using broker-dealer FOCUS Reports and XBRL data through the Commission's Financial Statement Query Viewer for the fiscal period ending Dec. 31, 2023. This group of filers also includes all 9 non-bank SBSDs that relied on orders granting substituted compliance under Exchange Act 3a71–6 in complying with the reporting requirements under Exchange Act Rule 18a–7(c) for the fiscal period ending Dec. 31, 2023.

[827] The ANC broker-dealer supplemental reports, which average approximately 100 pages in length, are an exception. Only five filers (the five ANC broker-dealers) are required to provide these reports.

[828] *See also supra* section IX.D.9.a (discussing estimated burdens associated with structuring Form X–17A–5 Part III information under the amendments). The structured data cost estimates here apply to all Form X–17A–5 Part III filers, including the 9 non-bank SBSDs that relied on orders granting substituted compliance under Exchange Act 3a71–6 in complying with the reporting requirements under Exchange Act Rule 18a–7(c) for the fiscal period ending Dec. 31, 2023. In each case, Form X–17A–5 Part III filers will incur the cost of applying Inline XBRL tags to the financial statements, footnotes, schedules, and supplemental reports in the annual audited report, or to corresponding disclosures in reports submitted under a substituted compliance order.

Structured Data Compliance Costs for Form X-17A-5 Part III

Filer Type	Estimated Per Filing Structuring Data Compliance Costs
Smaller broker-dealers	$330–$990
Larger broker-dealers and non-bank SBS Entities that are not affiliated with public reporting companies	$3,940–$11,820
Larger broker-dealers and non-bank SBS Entities that are affiliated with public reporting companies	$990–$2,960

A subset of larger Form X–17A–5 Part III filers also file Form 17–H and will thus be required to tag their quarterly financial statements in addition to their annual financial statements.[829] However, unlike Form X–17A–5 Part III, Item 4 of Form 17–H permits filers to omit the statement of cash flows and the notes to the financial statements. Thus, the Commission continues to use considerably lower Inline XBRL cost estimates for Form 17–H than for Form X–17A–5 Part III. As in the proposal, the Commission begins with the same cost estimate ranges for structuring financial statements—but not schedules or supplemental reports, because Form 17–H does not require them—on Form X–17A–5 Part III: $3,750 to $11,250 per filing for larger broker-dealers that are unaffiliated with public reporting companies, and $940 to $2,820 per filing for larger broker-dealers that are affiliated with public reporting companies.[830] The Commission then reduces the estimated costs by 30% to reflect the omission of notes and schedules, and further reduce the estimated costs by 30% to reflect the omission of the statement of cash flows. This yields an estimated cost of $350 to $1,050 for Form 17–H filers that are unaffiliated with public reporting companies, and $100 to $300 for Form 17–H filers that are affiliated with public reporting companies.[831]

Other portions of Form 17–H (namely, the facing page and the material associated positions and holdings disclosure) were previously structured in a custom XML data language specific to Form 17–H, and this will remain the case. Because nearly all broker-dealers subject to Form 17–H filing requirements previously filed Form 17–H via EDGAR, they have already been submitting the information in that custom XML language.[832] Thus, the Commission has not included an approximate custom XML structuring cost estimate for Form 17–H.

Structured Data Compliance Costs for Form 17-H

Filer Type	Estimated Per Filing Structured Data Costs
Larger broker-dealers that are not affiliated with public reporting companies	$350–$1,050
Larger broker-dealers that are affiliated with public reporting companies	$100–$300

Structured Data Cost Estimates: Covered SRO Forms, Form X–17A–19, and Rule 19b–4(e) Information

Under the rule amendments, the Covered SRO Forms (Form CA–1, Form 1, Form 1–N, Form 15A), Form X–17A–19, and the information required to be posted under Rule 19b–4(e) will require some or all the information reported on the forms or postings to be provided in a structured data language. Here, the Commission provides estimated ranges for the approximate cost that affected entities will incur to structure Forms CA–1, Form 1, and the Rule 19b–4(e) information. With respect to Form X–17A–19, due to the brevity and simplicity of that Form, the Commission anticipates SROs will not structure their disclosures in custom XML themselves, but will instead simply input their disclosures in the fillable web form that EDGAR would provide. Thus, a cost estimate for the structuring of Form X–17A–19 in custom XML is not relevant or appropriate to include. For the same reason, the Commission has not included estimated custom XML structuring cost ranges for the facing

[829] *See supra* section IX.C.10. The Commission does not include smaller Form X–17A–5 Part III filers (*i.e.,* those with $8 million or fewer in total assets) in this discussion because they do not meet the asset threshold for Form 17–H filing requirements. *See supra* section IV.B (discussing the thresholds that determine whether broker-dealers are subject to Form 17–H filing requirements).

[830] The Commission has identified 81 Form 17–H filers that, as of Dec. 31, 2023, were affiliated with public reporting companies that structure Commission filings in Inline XBRL, and estimates that 40 of these filers (approximately half) will incur costs within the lower estimated cost range. *See supra* text accompanying note 812.

[831] *See also supra* section IX.D.11 (discussing estimated burdens associated with structuring Form 17–H information under the amendments).

[832] As of Dec. 31, 2023, approximately 99% of the 241 broker-dealers that were then subject to Form 17–H filing requirements used EDGAR to file Form 17–H. *See supra* section IV.D.11.

pages to Form CA–1, Form 1, Form 1–N, and Form 15A. Because the facing pages of Form 1–N and Form 15A will be the only structured portion of those forms, the Commission has not provided any estimated structuring cost ranges for them.

Clearing agencies filing Form CA–1 will be required to tag their financial statements and a series of schedules containing largely narrative disclosures in Inline XBRL. For the financial statements, because clearing agencies likely operate at a higher level of complexity than the median Nasdaq-listed reporting company, the Commission estimates a 25% higher cost than the cost reported in the Nasdaq survey, resulting in an approximate per filing cost estimate of $4,690 to $14,070 for clearing agencies to tag financial statements in Inline XBRL. For the disclosures other than financial statements, the disclosure schedules on Form CA–1 to be tagged in Inline XBRL are considerably lengthier than the supplemental reports on Form X–17A–5 Part III discussed above. The Commission therefore estimates tagging the non-financial statement disclosures on Form CA–1 will add 25% of the costs to tag financial statements in Inline XBRL, resulting in a median per filing cost estimate of approximately $1,180 to $3,530 for clearing agencies to tag the non-financial statement disclosures on Form CA–1 in Inline XBRL. This results in a total estimated Inline XBRL tagging cost of $5,870 to $17,600 per filing on Form CA–1.[833]

Clearing agencies will be required to structure other Form CA–1 disclosures using a custom XML data language specific to that Form. The Commission recently estimated that the structuring of disclosures of Form N–CR event reports in custom XML will cost approximately $555 per filing. Here, the Form CA–1 disclosures to be structured in custom XML are lengthier than the Form N–CR disclosures that money market funds will structure in custom XML, so the Commission estimates an approximate cost per filing of $560 to $1,670 (using a 50% increase over the Form N–CR estimate) that clearing agencies will incur to structure the Form CA–1 schedules in custom XML.[834] The Commission therefore estimates that the total cost of structuring Form CA–1 (including Inline XBRL and custom XML disclosures) will amount to $6,430 to $19,270 per filing.[835]

For national securities exchanges, the Commission estimates the cost to tag financial statements on Form 1 in Inline XBRL will be similar to the cost that large broker-dealer affiliates of reporting companies will incur to tag financial statements on Form X–17A–5 Part III (estimated above at $940 to $2,820), because most exchanges are affiliated with reporting companies.[836] However, Form 1 also requires exchanges to provide balance sheets and income statements for its affiliates and subsidiaries, so the Commission continues to use an increase of 50%, yielding an estimated median per filing cost of $1,410 to $4,230 that exchanges affiliated with reporting companies will incur to tag financial statements on Form 1 in Inline XBRL.[837] For national securities exchanges that are not affiliated with reporting companies, the Commission continues to base its Inline XBRL cost estimate on larger broker-dealers unaffiliated with reporting companies, but with a 50% increase to account for the additional balance sheets and income statements for the exchange's affiliates and subsidiaries. This results in an estimated median per filing cost of $5,630 to $16,880 that exchanges unaffiliated with reporting companies will incur to tag financial statements on Form 1 in Inline XBRL.[838]

Exchanges also are now required under the rule amendments to tag their manner of operation disclosure in Inline XBRL.[839] This disclosure consists of a series of tagged narrative text blocks and could also include some quantitative amounts (such as those related to fee disclosures) that will also be tagged. We estimate an additional 10% cost that exchanges will incur to tag their manner of operation disclosure, resulting in a total estimated compliance cost of $1,550 to $4,650 per filing for exchanges affiliated with reporting companies and $6,200 to $18,580 for exchanges unaffiliated with reporting companies would incur to tag Form 1 in Inline XBRL.[840] Also, like clearing agencies, exchanges will be required to structure other portions of Form 1 in a custom XML data language specific to that Form.[841] Because these requirements are similar, the Commission continues to use the same custom XML structuring cost estimate of $560 to $1,670 here, resulting in a total per filing cost of structuring Form 1 (including Inline XBRL and custom XML) of $2,110 to $6,320 for exchanges affiliated with reporting companies and $6,760 to $20,250 for exchanges unaffiliated with reporting companies.[842]

By contrast, for the Rule 19b–4(e) information that exchanges will post on their websites in a custom XML data language (*i.e.,* schema) specific to that information, exchanges will not have the benefit of a fillable web form, and will thus be required to structure their disclosures in custom XML themselves. Rule 19b–4(e) information consists only of a short series of disclosures that are mostly text strings, so the Commission estimates a per response cost for structuring, rendering, and posting Rule 19b–4(e) information that is 50% lower than the Commission's aforementioned estimate for structuring Form N–CR in a previous proposal. This yields an approximate cost of $140 to $420 that exchanges will incur to structure each Rule 19b–4(e) website posting in custom XML.[843]

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[833] *See supra* section IX.D.5 (discussing estimated burdens associated with Form CA–1 under the amendments).

[834] *See* Investment Company Act Release No. 34441 (Dec. 15, 2021), 87 FR 7248, 7332 (Feb. 8, 2022).

[835] *See id.*

[836] As of Dec. 31, 2023, 17 of the 24 national securities exchanges were affiliated with public reporting companies. *See supra* note 830. The Commission estimates that approximately half, or 8, of these affiliated exchanges will fall within the lower set of cost estimates for Form 1 structured data compliance. *See supra* text accompanying note 812.

[837] *See supra* section IX.D.2 for a description of the burdens associated with tagging financial statements on Form 1.

[838] *See id.*

[839] This tagging requirement does not include the copy of the users' manual. *See supra* section II.A.3.

[840] *See id.*

[841] *See supra* section IX.D.2 for a description of the burdens associated with structuring portions of Form 1 in a custom XML data language.

[842] *See also supra* section IX.D.2 (discussing estimated burdens associated with structuring disclosures filed on Form 1 under the amendments).

[843] *See also supra* section IX.D.6 (discussing estimated burdens associated with structuring, rendering, and posting Rule 19b–4(e) information under the amendments).

Structured Data Compliance Costs for Covered SRO Forms and Rule 19b-4(e) Information

Form/Posting	Filers/Submitters	Estimated Per Filing/Posting Structured Data Costs
Form CA-1	Clearing agencies	$6,430–$19,270
Form 1	National securities exchanges that are not affiliated with public reporting companies	$6,760–$20,250
Form 1	National securities exchanges that are affiliated with public reporting companies	$2,110–$6,320
Form X-17A-19	National securities exchanges and registered national securities associations	N/A
Form 1-N	Securities Futures Product Exchanges	N/A
Form 15A	Registered national securities associations	N/A
Rule 19b-4(e) Information	National securities exchanges	$140–$420

Structured Data Cost Estimates: VDNs and CCO Reports

Under the rule amendments, SBS Entities will be required to structure the VDNs required under Exchange Act Rule 15fi–3(c) in a custom XML data language specific to those notices, and they will also be required to structure the CCO report required under Exchange Act Rule 15fk–1(c)(2)(ii)(A) in Inline XBRL. In addition, non-bank SBS Entities will be required to file Form X–17A–5 Part III and related annual filings in Inline XBRL; the structuring costs associated with that form are discussed above.

For VDNs, which are not required to include specific fields, and for dispute reports submitted by SBS Entities relying on substituted compliance pursuant to a Commission order with respect to the requirements of Rule 15fi–3(c), the Commission expects SBS Entities will use the fillable web form that EDGAR would provide rather than structure the disclosures in the custom XML data language themselves.[844] Thus, the Commission has not included a cost estimate for the custom XML structuring of the disclosures.

For the Inline XBRL tagging of the CCO report (or, for an SBS Entity relying on substituted compliance orders for Rule 15fk–1 under the Exchange Act, the home country report submitted pursuant to that substituted compliance order), the information to be tagged in those reports consists of a series of narrative text blocks, some of which could contain nested quantitative values (such as the description of financial resources set aside for compliance).[845] This content is similar to the content of the narrative disclosures on Form CA–1 that clearing agencies will structure in Inline XBRL under the amendments, which the Commission estimates as costing $1,180 to $3,530. Most SBS Entities, however, are affiliated with public reporting companies that already structure disclosures in Inline XBRL.[846] For those entities, that are able to leverage the Inline XBRL compliance experience, processes, software, and/or service agreements that their affiliates have already implemented, the Commission estimates a cost range of $300 to $880, which represents 25% of the cost incurred by SBS Entities that are not affiliated with public reporting companies.[847]

The Inline XBRL cost estimates described here apply to all SBS Entities, including SBS Entities that rely on substituted compliance orders. In each case, SBS Entities, which previously were not required to apply Inline XBRL tags to the narrative descriptions in their CCO reports or home country reports submitted under a substituted compliance order, will incur the cost of applying Inline XBRL tags to the narrative descriptions responsive to Rule 15fk–1(c) of the Exchange Act in their CCO reports, or to narrative descriptions that correspond to the descriptions addressed in Rule 15fk–1(c)(2)(i) that are included in reports submitted to the Commission under a substituted compliance order.

[844] *See supra* section V.C. As of Dec. 31, 2023, 19 SBS Entities relied on orders granting substituted compliance under Exchange Act Rule 3a71–6 in complying with the notice requirements under Exchange Act Rule 15fi–3(c). *See* List of Registered Security-Based Swap Dealers and Major Security-Based Swap Participants, *available athttps://www.sec.gov/tm/List-of-SBS-Dealers-and-Major-SBS-Participants.*

[845] As of Dec. 31, 2023, 10 SBS Entities relied on orders granting substituted compliance under Exchange Act Rule 3a71–6 in complying with the reporting requirements under Exchange Act Rule 15fk–1(c). *See id.*

[846] Of the 53 entities that had submitted applications for registration as an SBS Entity as of June 21, 2024, 43 are affiliated with public companies that file financial statement and cover page information in Inline XBRL. This includes 5 of the 10 SBS Entities that relied on orders granting substituted compliance under Exchange Act Rule 3a71–6 in complying with the reporting requirements under Exchange Act Rule 15fk–1(c). *See id.* The Commission estimates that approximately half, or 21, of the 43 affiliated SBS Entities will incur costs that fall within the lower set of cost estimates for VDN and CCO report structured data compliance.

[847] *See also supra* section IX.D.15 (discussing estimated burdens associated with structuring CCO reports under the rule amendments).

Structured Data Compliance Costs for VDNs and CCO Reports

Form	Filers/Submitters	Estimated Per Filing/Notice Structured Data Costs
VDNs	SBS Entities	N/A
CCO Reports	SBS Entities unaffiliated with public reporting companies	$1,180–$3,530
CCO Reports	SBS Entities affiliated with public reporting companies	$300–$880

Structured Data Cost Estimates: Initial Implementation Costs

The structured data cost estimates discussed above relate to the ongoing costs of structuring various disclosures in Inline XBRL and in custom XML-based data languages. The Commission estimates that certain of the affected entities will also incur costs associated with the initial implementation of the structured data requirements. In the proposing release, the Commission specifically estimated that affected entities that do not have structured data compliance experience and are not affiliated with entities that have structured data compliance will experience a 50% increase in compliance costs in the first year of the structured data requirements, and explained that these initial implementation costs could include establishing new procedures and training staff.

The Commission estimates a 50% increase in first-year compliance costs for most of these affected filers or submitters, but now also estimates an additional 25% increase in compliance for firms relying on a substituted compliance order to file Form X–17A–5 Part III or fulfill the reporting requirements of Exchange Act Rule 15fk–1(c). On an ongoing basis, firms relying on substituted compliance will incur the same costs to tag home country reports as firms that do not rely on substituted compliance, because in each case, the SBS Entity will incur the cost of applying Inline XBRL tags to the information addressed in Exchange Act Rule 15fk–1(c)(2)(i)(whether that information is provided in the report required by Rule 15fk–1(c) or included within the home country report required to be provided to the Commission by a substituted compliance order). In the first instance of compliance, however, the Commission estimates that firms relying on substituted compliance (or their third-party tagging service providers) will incur additional costs associated with identifying the particular disclosures in their home country reports that correspond to the descriptions addressed in Rule 15fk–1(c)(2)(i) and must therefore be tagged in Inline XBRL.

In the proposing release, the Commission stated that it expected the initial implementation costs to apply only to those filers or submitters that do not fully outsource their structured data preparation requirements to a third-party tagging service provider (*i.e.,* all filers or submitters other than smaller broker-dealers, which the Commission expects will outsource their structured data preparation requirements like many smaller reporting companies do).[848] One commenter, in describing structured data implementation costs, included costs associated with diligencing, negotiating with, and onboarding third parties.[849] The Commission agrees that the process of negotiating with, diligencing, and onboarding third parties is a relevant initial structured data implementation cost, and is revising its estimates here to reflect that affected filers or submitters that choose to fully outsource their tagging requirements to third-party tagging service providers will incur this implementation cost. Therefore, the Commission is revising its estimates to indicate that fully outsourcing firms (*i.e.,* smaller broker-dealers) will incur an additional 35% of the ongoing cost in the initial implementation year.

The impact of the estimated initial implementation costs overall is reflected in the following chart:

[848] *See supra* note 816.

[849] *See* SIFMA 5/22/2023 Letter at 4.

Structured Data Initial Compliance Costs

Form	Estimated Per Response Initial Structured Data Costs
Form X-17A-5 Part III (for larger broker-dealers and non-bank SBS Entities unaffiliated with public reporting companies that do not rely on substituted compliance)	$5,910–$17,730 (first year)
Form X-17A-5 Part III (for larger broker-dealers and non-bank SBS Entities unaffiliated with public reporting companies that rely on substituted compliance)	$6,900–$20,690 (first year)
Form X-17A-5 Part III (for smaller broker-dealers)	$450–$1,340 (first year)
Form CA-1 (for clearing agencies not subject to Rule 17ad-27(b) under the Exchange Act)	$9,650–$28,910 (first year)
Form 1 (for exchanges unaffiliated with public reporting companies)	$10,140–$30,380 (first year)
Rule 19b-4(e) information	$210–$630 (first response)
CCO report (for SBS Entities unaffiliated with public reporting companies (that do not rely on substituted compliance)	$1,770–$5,300 (first year)
Home country report pursuant to substituted compliance order regarding Rule 15fk-1 (for SBS Entities unaffiliated with public reporting companies)	$2,070–$6,180 (first year)

Form 17–H is excluded from the table above, because Form 17–H filers also file Form X–17A–5 Part III. Including initial implementation costs for structuring financial statements on Form 17–H would be duplicative of the initial implementation costs for structuring financial statements on Form X–17A–5 Part III, which are reflected in the table.[850] Form CA–1 initial implementation costs do not apply to clearing agencies that provide a central matching service, because such clearing agencies are subject to Inline XBRL requirements for annual straight-through processing reports required by Rule 17ad–27(b) under the Exchange Act.[851]

For Rule 19b–4(e) information, the Commission anticipates the initial implementation costs will apply only to the first posting, and not to subsequent postings during the first year of compliance. The content required by Rule 19b–4(e) is limited to less than 10 individual items of disclosure regarding the newly traded derivative securities product for each posting. The Commission expects the process of structuring, rendering, and posting the first response will entail additional implementation time to map the associated (and commensurately simple) custom XML schema to the information regarding the new derivative securities product traded on the exchange; the Commission expects subsequent responses will entail a less burdensome process of applying the newly mapped schema to each derivative securities product.[852]

c. Other Compliance Costs

One commenter suggested that there would be costs because of ''the time it will take firms to hire and train staff, identify and retain service providers and software, overhaul their systems, and engage in robust testing with the Commission'' combined with ''other Commission initiatives that firms are implementing.'' [853] We have considered

[850] *See* 17 CFR 240.15fk–1(c)(2)(i)(E).

[851] *See* 17 CFR 240.17ad–27(b); 17 CFR 232.405(b)(5)(i) (to be redesignated as 232.405(b)(5)(vi) under the rule amendments).

[852] *See also supra* section IX.D.6 (discussing estimated burdens associated with structuring, rendering, and posting Rule 19b–4(e) information).

[853] *See* SIFMA 5/22/2023 Letter at 14 (commenting on ''the time it will take firms to hire and train staff, identify and retain service providers and software, overhaul their systems, and engage in robust testing with the Commission, as well as attend to the numerous other Commission initiatives that firms are implementing (*e.g.,* T+1)''). Although the date of the T+1 transition has passed,

Continued

the potential effects on entities that are implementing other recently adopted rules during the compliance period for these amendments.

Consistent with its long-standing practice, the Commission's economic analysis in each adopting release considers the incremental benefits and costs for the specific rule—that is, the benefits and costs stemming from that rule compared to the baseline. The Commission acknowledges the possibility that complying with more than one rule in the same time period may entail compliance costs that will be higher than if the rules were to be complied with separately. Although no commenter named specific rules in this context, the Commission identified several rules for which the compliance periods overlap, in part, with the compliance periods for the amendments, but the phased compliance dates for forms and filings affected by these amendments will limit the extent to which overlap occurs.[854]

Entities subject to the amendments may be subject to one or more other recently adopted rules depending on whether those entities' activities fall within the scope of the other rules. Specifically, the Short Position Reporting Adopting Release applies to some investment managers,[855] and the Rule 605 Adopting Release applies to market centers, which include exchanges, and certain brokers and dealers.[856] The Tick Size and Access Fee Adopting Release applies to national securities exchanges and certain brokers and dealers.[857] The Rule 10c–1a, Customer Notification, and Beneficial Ownership Adopting Releases also apply to certain brokers and dealers [858]—although due to differing requirements, these rules may not all apply to any given broker or dealer. The Clearing Agency Governance Adopting Release applies to registered clearing agencies, the Recovery/Wind-Down Adopting Release applies to covered clearing agencies, and the Treasury Clearing Adopting Release applies to certain clearing agencies for U.S. Treasury securities and certain participants of the covered clearing agencies which could include broker-dealers.[859] Where overlap in compliance periods exists, the Commission acknowledges that there may be additional costs on those entities that are subject to one or more other rules.

D. Efficiency, Competition, and Capital Formation

Mandated electronic submission and posting will increase the timeliness of public access to the affected documents that are made publicly available. Insofar as market participants use the information in these documents, easier or quicker access could result in lower search costs or more efficient decision making. These benefits are potentially magnified during disruptive events, such as a pandemic, when investors may place a premium on electronic and timely access to information. Furthermore, the efficiency benefits of electronic submission or posting may be augmented by the structured data requirements, as structured data requirements have been observed to decrease information asymmetries, increase liquidity, and reduce the cost of capital.[860] The structured data requirements for those affected documents that are used by information intermediaries (such as financial analysts and data aggregators) may also increase competition and encourage market entry by reducing their information processing costs.[861]

Moreover, as mandated electronic submission or posting leads to lower ongoing, marginal costs for reporting entities, compared to non-electronic submission, the submission or posting process may become more efficient, especially over the medium and longer term. In addition, electronic submission or posting standards in the amendments are expected to make the submission or posting process more efficient by making it easier and less costly for reporting entities to assure timely receipt and/or availability of the submitted information. We expect, however, that any such efficiency gains would be small. The efficiency gains that will arise under the rule amendments will likely be further mitigated in the near term because, as noted, the Inline XBRL requirements will impose initial implementation costs on affected entities subject to the requirements that do not have prior experience with Inline XBRL.

As discussed above, similar implementation costs are unlikely to arise for most of the EDGAR custom XML forms, because EDGAR will provide a fillable web form in which affected entities will be able to input their disclosures without having to structure them in the relevant custom XML data language. By contrast, implementation costs are likely to arise for SROs subject to the custom XML schema requirement for posting Rule 19b–4(e) information, because those will be posted on the SROs' websites rather than filed through EDGAR; however, due to the relatively small amount of data to be structured, rendered, and posted for each new derivative securities product, the Commission expects the cost of structuring each Form 19b–4(e) will be lower than the cost of structuring Commission filings in Inline XBRL.[862]

The costs and benefits of electronic submission or posting under the rule amendments may have differential impacts on some categories of reporting entities, resulting in potential competitive effects. To the extent that the EDGAR cost has a fixed component, smaller entities that do not have experience with EDGAR may be at a relative competitive disadvantage to larger entities. In addition, smaller registrants might use third party service providers to meet the requirements of the amendments. The use of these providers could reduce the costs of EDGAR access and reduce the competitive effects of the requirements.[863] In addition, many of the reporting entities already are familiar with electronic submission in EDGAR due to changes in market practices and an increase in electronic submission due to the pandemic.

we consider other recently adopted rules in this analysis. *See also supra* section IV.A. for a discussion of phased compliance dates.

[854] *See supra* section X.B.1 (listing recent rule adoptions and their respective compliance dates) and section VIII (listing compliance dates).

[855] *See* Short Position Reporting Adopting Release at 75150.

[856] *See* Rule 605 Adopting Release at 26496–97.

[857] *See* Tick Size and Access Fee Adopting Release at section VII.C.4.

[858] *See* Rule 10c–1a Adopting Release at 75647, 75717–18; Customer Notification Adopting Release at 47689, 47725; Beneficial Ownership Adopting Release at 76897, 76945.

[859] *See* Clearing Agency Governance Adopting Release at 84498; Recovery/Wind-Down Adopting Release at nn. 5–6 and section IV.B.1; Treasury Clearing Adopting Release at 2717, 2791. All registered clearing agencies are currently CCAs. *See* Clearing Agency Governance Adopting Release at 84468.

[860] *See, e.g.,* N. Bhattacharya, Y.J. Cho, & J.B. Kim, *Leveling the Playing Field Between Large and Small Institutions: Evidence from the SEC's XBRL Mandate,* 93 Account. Rev. 51 (Sept. 1, 2018); B. Li, et al., *The Impact of XBRL Adoption on Local Bias: Evidence from Mandated U.S. Filers,* 39 J. Account. Pub. Pol. Article No. 106767 (Nov. 2020); W. Sassi, H. Ben Othman, & K. Hussainey, *The Impact of Mandatory Adoption of XBRL on Firm's Stock Liquidity: A Cross-Country Study,* 19(J. Fin. Report. Account. 299 (May 28, 2021); C. Ra & H. Lee, *XBRL Adoption, Information Asymmetry, Cost of Capital, and Reporting Lags,* 10 iBusiness 93 (Sept. 2018); S.C. Lai, et al., *XBRL Adoption and Cost of Debt,* 25 Intl. J. Account. Info. Mgmt (May 2015); Y. Cong, J. Hao, & L. Zou, *The Impact of XBRL Reporting on Market Efficiency,* 28 J. Info. Sys. 181 (2014).

[861] *See supra* section X.C.1.b.

[862] *See supra* sections IX.D.6 and X.C.2.b.

[863] The rule might increase demand for third party services, but is unlikely to have significant effects on efficiency, competition, or capital formation in these markets.

For the Inline XBRL requirements, it is less likely that the associated compliance costs will be fixed, because the documents filed or submitted by smaller entities (such as smaller broker-dealers) are likely shorter and less complex than documents filed or submitted by larger entities (such as larger broker-dealers), and will thus require less time and sophistication to tag in Inline XBRL. By contrast, compliance costs for the custom XML requirements will, in most instances, be fixed, because except for Form 1 and Form CA–1 filers and SROs posting Rule 19b–4(e) information, the Commission expects affected filers or submitters will comply with such requirements by completing fillable web forms rather than structuring their disclosures in custom XML.[864]

In addition, one commenter requested the Commission consider interactions between the economic effects of the proposed rule and other recent Commission rules, as well as practical realities such as implementation timelines.[865] As discussed above, the Commission acknowledges that overlapping compliance periods may in some cases increase costs. This may be particularly true for smaller entities with more limited compliance resources. This effect can negatively impact competition because these entities may be less able to absorb or pass on these additional costs, making it more difficult for them to remain in business or compete. We acknowledge that to the extent overlap occurs between the compliance periods of this rule and the compliance periods of other rules, there could be costs that could affect competition. However, phased compliance dates for forms and filings affected by the amendments will limit overlap between compliance periods, which may be particularly helpful for smaller entities. We therefore do not expect the risk of negative competitive effects from increased compliance costs from overlapping compliance periods to be significant.

The final rule will have an indirect effect on capital formation, namely through a more efficient financial marketplace. Improving the efficiency of financial markets will incentivize investors to invest, indirectly promoting the formation of capital.

To the extent that market practices are already consistent with the Updated Staff Statement, many of the expected effects of the amendments on efficiency, competition, and capital formation may be mitigated. For example, for broker-dealer registrants that file reports pursuant to Rule 17a–5 electronically, the efficiency gains of electronic submission will be mitigated, and the effects of the amendments will be limited to those associated with the use of structured data.

E. Reasonable Alternatives

1. Exempt Certain Entities or Disclosures From Structured Data Requirements

As an alternative, the Commission could have changed the scope of the structured data requirements (*e.g.,* Inline XBRL tagging requirements for Form X–17A–5 Part III, Form 17–H, Form CA–1, Form 1, and the CCO reports) by exempting certain subsets of reporting entities or documents. For example, the Commission could have exempted some broker-dealers from the requirement to structure Form X–17A–5 Part III and related annual filings based on size (*e.g.,* total reported assets) or other characteristics. One commenter supported such an approach, stating that XBRL requirements should be limited only to very large broker-dealers or broker-dealers that are custodians.[866] Specific potential exemption thresholds could have been broker-dealers with $500,000 or less in total assets (which would have exempted 1,260, or 37%, of registered broker-dealers as of December 31, 2023), or broker-dealers with $250,000 or less in total annual revenues (which would have exempted 1,080, or 31%, of registered broker-dealers as of December 31, 2023).[867] Such thresholds would have prevented smaller broker-dealers from incurring the compliance costs associated with the Inline XBRL tagging requirements for Form X–17A–5 Part III. Another alternative would have been to limit the Inline XBRL tagging requirements only to those broker-dealers that carry customer or broker-dealer accounts and receive or hold funds or securities for customers (which would have exempted 3,246, or 96%, of registered broker-dealers, as of December 31, 2023). This approach may have been useful in targeting the Inline XBRL requirements towards those broker-dealers that may have the most impact on financial markets due to the funds or securities they hold for customers, while reducing compliance costs for all other broker-dealers. However, any cost savings arising from the exemption of certain subsets of reporting entities or disclosures from the Inline XBRL requirements would not have justified the reduction in informational benefits to data users such as Commission staff and market participants, who would have been required to manually collect unstructured data from the exempted reporting entities or disclosure items in order to analyze it (or rely on and incur costs to third parties to do so).

2. Require Structured Data on Form 1–N, Form 15A, and ANE Exception Notices to Same Extent as Structured Documents

As another alternative, the Commission could have required structuring Form 1–N, Form 15A, and the ANE Exception Notices to the same extent as comparable Structured Documents. For example, the Commission could have required Form 1–N and Form 15A, which are similar to Form CA–1 and Form 1 in that they contain substantive disclosures in exhibits to an execution page, to be structured using a mix of Inline XBRL and custom XML data languages. The Commission could also have required ANE Exception Notices, which contain only a limited number of data points, to be structured using a custom XML data language. Structuring these documents would have extended the analytical capabilities associated with the other structured data requirements in this release to these additional documents.

However, the limited number of filers and filings (for Form 1–N and Form 15A) and the limited number of data points on each document (for the ANE Exception Notices) would have limited the potential utility of functionality enabled by structured data (such as large-scale comparisons across populations of entities). Given this limitation on expected benefits, the additional structuring requirements would not have been justified.

3. Replace Inline XBRL Requirements With Custom XML Requirements or Vice Versa

As another alternative, the Commission could have replaced the custom XML requirements with Inline XBRL requirements for some or all of the relevant Structured Documents (which include Form X–17A–5 Part III, Form 17–H, Form CA–1, Form 1, Form 1–N, Form 15A, Form X–17A–19, Rule 19b–4(e) information, VDNs, and CCO reports). For example, rather than requiring Inline XBRL structuring for certain of the affected documents, and custom XML structuring for other affected documents, the Commission could have required Inline XBRL for all of the affected documents required to be structured (*i.e.,* require Form X–17A–19,

[864] *See supra* section X.A.

[865] *See supra* section X.C.2.c. (discussing SIFMA 5/22/2023 Letter at 14).

[866] *See* Integrated Solutions letter at 4.

[867] *See supra* section X.B.3.

the execution pages of Forms 1–N and 15A, VDNs, the information required to be posted under Rule 19b–4(e), and the entirety of the other Covered SRO Forms, Form X–17A–5 Part III, and Form 17–H, to be provided using Inline XBRL rather than using custom XML-based data languages).

This alternative could have benefited users of the data in that the reported information could have been used compatibly (*e.g.,* using the same software tools) with the disclosures in the other affected documents (and with existing Inline XBRL data). However, the alternative would also have imposed the costs and complexity associated with Inline XBRL tagging on Forms and notices and reports that are each limited to a constrained set of non-financial, non-narrative data elements or are otherwise less suitable for Inline XBRL, thus potentially making the structured disclosures more burdensome to prepare and use than is called for by these particular disclosures.[868] The difficulties in preparing and using such data under an Inline XBRL requirement would likely not have been justified by any compatibility benefits that would arise from such an alternative.

One commenter generally supported adding XBRL requirements throughout the proposal rather than relying on a mixture of XBRL and custom XML requirements, stating that XBRL requirements provide greater benefit than custom XML requirements.[869] The commenter stated that a fillable web form that automatically generates XBRL files can be created just as easily as one that creates a custom XML file. While the Commission agrees that this is technically feasible, the EDGAR system is (with limited exception) currently built to provide fillable web forms for custom XML filings, not for XBRL filings, and changing the system would incur costs and burdens that would not justify the related benefit.

The Commission could alternatively have replaced the Inline XBRL requirements with custom XML requirements for some or all of the relevant Structured Documents (which include Form X–17A–5 Part III, Form 17–H, Form CA–1, Form 1, and CCO reports). However, while this could have led to benefits such as smaller file sizes and lower compliance burdens (to the extent entities would have inputted disclosures into fillable forms rather than structuring the disclosures themselves), Inline XBRL is more technically suited to handle financial statement disclosures (and was originally designed to so), as well as extended narrative discussions (including those with individual values nested within the discussions). Accordingly, Inline XBRL as required for these forms is appropriate.

4. Require Structured Data Languages Other Than Inline XBRL and Custom XML

As another alternative, the Commission could have required structured data languages other than Inline XBRL and custom XML for some or all the affected documents. For example, the Commission could have required other variants of XBRL, such as XBRL–CSV (''Comma-Separated Values'') or XBRL–JSON (''JavaScript Object Notation''). As stated in the Proposing Release, public commenters in other rulemakings had indicated that using these XBRL variants could entail benefits, such as smaller file sizes and greater ease of use.[870] One commenter conveyed its support for XBRL requirements and stated that the type of XBRL (such as XBRL–CSV, XBRL–JSON, or Inline XBRL) that should be used depends on the type of data collected.[871] This commenter encouraged the Commission to explore XBRL–CSV as an alternative to the proposed custom XML requirements, stating that XBRL–CSV files are smaller than custom XML files because files generated in XBRL–CSV can rely on references to taxonomies to include the necessary labels, definitions, and relationships, whereas a custom XML file must contain all necessary labels, definitions, and relationships itself.[872]

The Commission agrees with the commenter that using an XBRL–CSV requirement in place of the custom XML requirements under the amended rules would have yielded smaller files than custom XML files and could therefore have incremental usability benefits for data users. However, unlike custom XML and Inline XBRL, no EDGAR filings are currently filed using the XBRL–CSV format or the XBRL–JSON format, and the EDGAR system currently does not accept these formats.[873] As such, the usability benefit associated with XBRL–CSV or XBRL–JSON would not have justified the burden of expanding reporting and intake capability to accommodate JSON or CSV.

Other structured data languages that could have been used include the Financial Information eXchange Markup Language (''FIXML''), which the Commission recently proposed for security-based swap position reporting, and pipe-delimited ASCII, which the Rule 605 NMS Plan currently requires for market centers' order execution reports.[874] However, FIXML is generally designed to accommodate the communication of information related to securities trading, whereas the information required by the Structured Documents is broader.[875] For pipe-delimited ASCII, unlike custom XML, EDGAR does not currently provide fillable forms or rendering applications for that format. In addition, the use of pipe-delimited ASCII rather than custom XML and Inline XBRL would have precluded more complex technical validations (such as checks on any disclosures nested within narrative descriptions).

5. Permit, Not Require, Structured Data for Affected Documents

As another alternative, the Commission could have replaced some or all the structured data requirements with voluntary structuring provisions. This would have provided greater

[868] *See supra* section VII.A.

[869] *See* XBRL Letter at 2.

[870] *See* Letter from Campbell Pryde, President and CEO, XBRL US, ''RE: Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, File Number S7–11–21'' (Dec. 14, 2021), *available at https://www.sec.gov/comments/s7-11-21/s71121-20109496-263895.pdf* (stating, ''The XBRL–CSV specification allows data to be prepared in a simple CSV file which can then be opened in Excel. Data prepared using XBRL–CSV can be loaded automatically with no need to understand the meaning of individual columns (which would need to be reviewed if ingesting a custom XML file)''); Letter from Gregory Babyak, Global Head of Regulatory Affairs, Bloomberg, L.P., Bloomberg L.P. ''Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers Release No. 34–93169/File No. S7–11–21'' (Dec. 14, 2021), *available at https://www.sec.gov/comments/s7-11-21/s71121-20109566-263925.pdf* (stating, ''JSON makes for significantly smaller files, does not need specialized tools and libraries, and is both easier to consume and generate'').

[871] *See* XBRL Letter at 11.

[872] *See id.* at 2.

[873] *See* Regulation S–T, 17 CFR 232.101(a)(1)(iv); 17 CFR 232.301; EDGAR Filer Manual, Volume II, at 5.1 (requiring EDGAR filers generally to use ASCII or HTML for their document submissions, subject to certain exceptions).

[874] *See* Exchange Act Release No. 93784 (Dec. 15, 2021), 87 FR 6652, 6675 (Feb. 4, 2022); 17 CFR 242.605(a)(2) and Securities and Exchange Commission File No. 4–518 (National Market System Plan Establishing Procedures Under Rule 605 of Regulation NMS) at 2 (''Section V . . . provides that market center files must be in standard, pipe-delimited ASCII format'').

[875] *See What Is FIX?, available at https://www.fixtrading.org/what-is-fix/* (last visited Apr. 19, 2024) (''The FIX Protocol language is comprised of a series of messaging specifications used in trade communications''). FIXML is the machine-readable data language associated with the Financial Information eXchange (''FIX'') Protocol. *See* FIXML Online, Technical Specification, Version 1.1. (May 2014), *https://www.fixtrading.org/standards/fixml-online/* (last visited Apr. 19, 2024).

flexibility to respondents and eased compliance burdens on any respondents that chose not to structure their filings or postings. For instance, Form X–17A–5 Part III and Form 17–H were previously partially subject to custom XML structured data requirements when voluntarily filed on EDGAR, and approximately half of broker-dealers chose to voluntarily file their annual reports on EDGAR.[876] Some respondents may have been incentivized by the benefits of structured data, such as reduced audit fees, and the ability to review of peer respondents' structured disclosures in order to assist with their own disclosure preparations,[877] and thus may have pursued those benefits even in the absence of structured data requirements. However, as shown by the number of broker-dealers that did not voluntarily file on EDGAR, relying on all affected entities to pursue such incentives would likely have resulted in the incomplete provision of structured data. This would have resulted in incomplete datasets, thereby adversely affecting the informational benefits that will accrue from structured data requirements.

One commenter, in the particular context of CCO reports, stated that the Commission should require a single reporting process to avoid confusion and added expense to the marketplace.[878] According to the commenter, allowing reporting entities to choose from a variety of approaches will require data users to employ different data collection methodologies to extract the data they need.[879] The Commission agrees that allowing reporting entities to choose from different reporting approaches—such as allowing some reporting entities to submit documents in an unstructured format—would add burden to data users, because they would have to manually collect and process unstructured information from entities choosing not to structure their reports, and compare it to the results of analyses of structured information from entities that do choose to structure those same reports. The Commission is therefore not including voluntary structuring requirements under the amended rules.

[876] *See infra* note 916 and accompanying text.

[877] *See supra* section X.C.1.b.

[878] *See* XBRL Letter at 9–10; *see also id.* at 10 (''Processing data in structured, machine-readable XBRL format takes seconds compared to HTML which takes at least 20 minutes, PDF around 30 minutes, and an image file, about 50 minutes.'').

[879] *See id.*

6. Exempt Smaller Entities From Electronic Submission or Posting Requirements

As another alternative, the Commission could have exempted smaller entities from electronic submission or posting requirements for some or all of the affected documents. This could take the form of some thresholds based on total assets, total annual revenues, net capital requirements, a combination of factors, or the type of entity (*e.g.,* whether the broker-dealer carries customer accounts and receives or holds customer cash and securities, or whether the broker-dealer is an OTC derivatives dealer).

While this alternative could have reduced the cost burden to smaller entities, this alternative would also have eliminated the benefits of electronic submission and posting for these entities, such as the reduction of costs and the improved efficiency of the submission process. In addition, exempting smaller entities from the submission or posting requirements might have reduced the value of publicly available data if the result was that only a portion of the submissions are machine-readable or if multiple methods were required to access all the data as might occur if some portion of forms were submitted electronically via EDGAR while other submissions of the same form are made publicly available as PDFs of paper submissions.

7. Require SROs To Submit Form 19b–4(e) Via EDGAR

As another alternative, rather than requiring the information required by Rule 19b–4(e) under the Exchange Act to be posted on an SRO's website in custom XML, the Commission could have amended Rule 19b–4, Form 19b–4(e), and the instructions thereto to require SROs to submit Form 19b–4(e) with the Commission via EDGAR using custom XML. One commenter stated that Form 19b–4(e) should be submitted to EDGAR (or, alternatively, that the Commission or another party should create a registry where links to these documents can be posted).[880] The commenter stated that this would facilitate ease of use for market participants, who would be able to collect all needed data in one location rather than set up mechanisms to track new form postings on multiple websites.[881] The commenter also stated that such an approach would be unlikely to increase the reporting burden for SROs.[882]

[880] *See* XBRL Letter at 6.

[881] *See id.*

[882] *See id.*

The Commission disagrees with the commenter and is adopting the rule as proposed, because SROs provide thousands of Forms 19b–4(e) each year, and the Commission expects the products subject to Rule 19b–4(e) will continue to number in the thousands going forward. In addition, the information to be provided under Rule 19b–4(e) is limited to no more than eight basic information items, including ticker symbol, type of issuer, and whether the underlying instrument is a broad or narrow-based index. Given the quantity of these products and the limited set of information required to be provided under Rule 19b–4(e) for each new product, requiring EDGAR submission would be an unduly burdensome process compared to SRO website posting, which will provide a readily accessible interface for market participants to access this data without necessitating submission to EDGAR. Similarly, a registry of links would add an unnecessary layer of complexity in making the information publicly available when many market participants are already familiar with accessing SROs' public websites.

8. Require the Use of Dedicated Mailbox

As another alternative, the Commission could require registrants submit by sending some or all the affected documents to a dedicated email inbox in addition to eliminating the paper requirement. For example, rather than requiring registered clearing agencies to post Rule 17a–22 materials on their websites, the Commission could require registered clearing agencies to submit electronic copies of Rule 17a–22 materials to a dedicated email inbox at the Commission, as they have been doing recently, consistent with the Updated Staff Statement.[883] Similarly, another example would be to require SROs to send Form 19b–4(e) materials to a dedicated email inbox at the Commission, rather than publicly posting the materials on their websites. This alternative would facilitate Commission staff access to the Rule 17a–22 and 19b–4(e) materials compared to the requirements being adopted, as Commission staff would receive the materials directly rather than having to navigate to each registered clearing agency's individual website. However, this alternative could delay or preclude their availability for market participants and require Commission staff to upload these documents to EDGAR, imposing costs and delays on

[883] *See* Updated Staff Statement.

the process.[884] One commenter agreed with the proposed amendments, stating that it already posts material on its website and that email submission is duplicative.[885] In addition, to the extent that market participants have already developed the practice of submitting the affected documents via EDGAR—for these documents, the alternative, requiring submission to an electronic mailbox would entail both a higher cost and a lower benefit for market participants.

XI. Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act requires Federal agencies, in promulgating rules under section 553 of the Administrative Procedure Act,[886] to consider the impact of those rules on small entities. The Commission has prepared the following Final Regulatory Flexibility Analysis in accordance with section 4(a) of the RFA.[887] An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with the RFA and was included in the Proposing Release.[888]

A. Regulatory Flexibility Act Certification

The final amendments include changes that will affect brokers, dealers, national securities exchanges, clearing agencies, Securities Futures Product Exchanges, and SBS Entities. With regard to a national securities exchange subject to Rule 17a–19, a small entity is an exchange that has been exempt from the reporting requirements of Rule 601 under Regulation NMS and is not affiliated with any person (other than a natural person) that is not a small business or small organization. With respect to a clearing agency, a small entity is a clearing agency that: (1) compared, cleared and settled less than $500 million in securities transactions during the preceding fiscal year (or in the time that it has been in business, if shorter); (2) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (3) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[889] When used with reference to an ''issuer'' or a ''person,'' other than an investment company, a small entity includes an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less.[890]

No national securities exchange, Security Futures Product Exchange, or national securities association is a ''small entity'' as currently defined. With regard to clearing agencies, based on publicly reported data the Commission does not believe that any registered or exempt clearing agency is a ''small entity'' as currently defined. With respect to registrants subject to Rule 17a–12, based upon financial reports and other information filed with the Commission by such entities, none of the entities subject to Rule 17a–12 is a ''small entity'' as currently defined. With respect to SBS Entities, based on feedback from market participants and staff experience with the security-based swap markets, and consistent with the Commission's position in prior Dodd-Frank Act rulemakings, the Commission continues to believe that (1) the types of entities that register with the Commission as SBSDs (*i.e.,* because they engage in more than a *de minimis* amount of dealing activity involving security-based swaps)—which generally would be large financial institutions—would not be ''small entities'' for purposes of the RFA and (2) the types of entities that may have security-based swap positions above the level required to be MSBSPs would not be ''small entities'' for purposes of the RFA.[891] The Commission thus continues to believe that SBS Entities providing notices (and any amendments to the notices) required by Rule 15fi–3(c) [892] or filing annual reports required by Rule 18a–7 would not be ''small entities'' for purposes of the RFA. The Commission also continues to expect that all Relying Entities making use of the ANE Exception from the *de minimis* threshold to SBSD status would not be ''small entities'' for purposes of the RFA.[893] As a result, any Registered Entity filing an ANE Exception Notice or withdrawal of an ANE Exception Notice also would not be a ''small entity.'' [894] Consequently, with respect to the entities described in this paragraph, the Commission certifies that the amendments, as adopted, will not have a significant economic impact on a substantial number of small entities.

B. Regulatory Flexibility Act Analysis

The analysis below applies to broker-dealers that are considered ''small entities'' for Regulatory Flexibility Act purposes.

1. Need for, and Objectives of, the Final Amendments

The purpose of the final amendments is to modernize the filing and submission of certain Commission forms by requiring these forms to be filed or submitted electronically, often in structured data format. With respect to the amendments relating to the FOCUS Report, the purpose is to harmonize the form with other rules, make technical corrections, and provide clarifications. The need for, and objectives, of the final amendments are discussed in sections I through VII above. The economic impact and potential alternatives to the amendments are discussed in section X, and the estimated compliance costs and burdens of the amendments under the PRA are discussed in section IX.

2. Significant Issues Raised by Public Comments

In the Proposing Release, the Commission requested comment on any aspect of the IRFA, and particularly on the number of small entities that would be affected by the proposed amendments, whether there are more efficient or less burdensome ways for the Commission to modernize its collection of information from registrants, the existence or nature of the potential impact of the proposed

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[884] *See* XBRL Letter at 8, which argued against giving SBS entities flexibility to choose from reporting options, claiming that data users would be disadvantaged, and that it would impose costs on the reporting ecosystem. *See also* Sage Letter, stating support for making Form 19b–4(e) publicly posted on the SRO website.

[885] *See* OCC 5/22/2023 Letter at 4.

[886] 5 U.S.C. 553.

[887] 5 U.S.C. 604(a).

[888] *See* Proposing Release at section XI.

[889] 17 CFR 240.0–10(d).

[890] 17 CFR 240.0–10(a).

[891] *See* Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48964, 49013 (Aug. 14, 2015); Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions, Exchange Act Release No. 93784 (Dec 15, 2021), 87 FR 6652, 6702–03 (Feb 4, 2022).

[892] *See* Risk Mitigation Adopting Release, 85 FR at 6411–12.

[893] *See* Cross-Border Adopting Release, 85 FR at 6345.

[894] Because the Commission does not expect any Relying Entity to be a ''small entity'' for purpose of the RFA, any affiliated broker serving as the Registered Entity for purposes of the ANE Exception also would not be a ''small entity.'' *See* Cross-Border Adopting Release, 85 FR at n.737. Moreover, any registered SBSD serving as the Registered Entity for purposes of the ANE Exception would likely be registered as such because it engages in security-based swap dealing above the *de minimis* threshold, and therefore also would not, in the Commission's view, be a ''small entity.'' *See supra* note 900 and accompanying text. Even in the unlikely event that some Relying Entities satisfy the ANE Exception's conditions via the use of an affiliated Registered Entity that is a registered security-based swap dealer and a ''small entity'' for purposes of the RFA, the Commission continues to believe that there would not be a substantial number of such entities. *See* Cross-Border Adopting Release, 85 FR at 6345.

amendments on small entities discussed in the IRFA, and whether there are any Federal rules that duplicate, overlap, or conflict with the proposed amendments.[895]

One commenter disagreed that structuring broker-dealer reports is necessary because regulators receive periodic FOCUS reports that are already encoded and there is no need to make broker-dealer financial statements machine-readable.[896] As discussed earlier in this release,[897] the Commission disagrees with the commenter's point, because the annual broker-dealer audited reports include more disclosure—such as the notes to the financial statements and the exemption reports—than the periodic FOCUS reports do. Another commenter stated that requiring firms to file documents in structured data puts a greater burden on smaller firms than larger firms, and requested that the Commission amend Regulation S–K to require larger investors to convert their material contracts into XBRL format and then file them with the Commission.[898] However, the types of firms that are subject to the structured data formatting requirements in this release are generally not the same types of firms that are subject to Regulation S–K, so this additional requirement would not equalize the burden between small and large firms.

3. Small Entities Subject to Final Amendments

The final amendments include changes that will affect brokers. For purposes of Commission rulemaking in connection with the RFA,[899] a small entity includes a broker or dealer that: (1) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to paragraph (d) of Rule 17a–5 under the Exchange Act,[900] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[901] Based on FOCUS Report and Form BD data, the Commission estimates that as of March 31, 2024, approximately 723 broker-dealers might be deemed small entities for purposes of this analysis.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

In general, the amendments to Rule 17a–5 that implicate broker-dealers that are small entities would require that a broker-dealer: (1) file its annual reports and related annual filings electronically on EDGAR using structured data; and (2) keep the original oath or affirmation for a period of not less than six years, the first two in an easily accessible place in accordance with the requirements of Rule 17a–4.[902]

As stated above, it has been the staff's experience that electronic filing has been practical and efficient. It also has been the staff's experience that electronic filing has been positively received by the broker-dealers who are currently filing their annual reports electronically on EDGAR. Based on these positive experiences with electronic filing and as part of its efforts to modernize the methods by which it collects information from registrants, the Commission is amending certain rules and forms, including certain rules and forms that would impact broker-dealers that are small entities.

With respect to the structured data requirements, XBRL requirements for public company financial statements have been observed to increase the ease and efficiency of analyzing those structured disclosures (*e.g.,* allowing for efficient comparisons of disclosures across multiple reporting entities and multiple time periods).[903] Such benefits have encompassed small public companies as well as large public companies, and have accrued to both public and regulatory entities.[904] Therefore, the structured data requirements under the amendments would facilitate the use of the information reported by broker-dealers in their annual reports and related filings to support Commission staff conducting risk assessment and enforcement activities,[905] or, with respect to the public portion of the annual reports and related filings, information intermediaries (analysts, researchers and media) and investors conducting research to interpret or improve processing of financial information.[906]

The compliance costs of the amendments relating to the requirement to file on EDGAR will not be significant. Smaller entities that are broker-dealers will need to familiarize themselves with the EDGAR system; however, the familiarization process will not be particularly burdensome. Approximately 1,769 out of an estimated 3,267 broker-dealers, which constitutes more than half of broker-dealers, have chosen to voluntarily file their respective annual reports on EDGAR. Furthermore, with respect to the structured data requirements, based on observed trends in XBRL compliance costs for small public companies,[907] the compliance costs for broker-dealers that are small entities would be modest and would continue to decrease over time.

There will be benefits to small entities resulting from filing on EDGAR. For example, once a smaller entity has familiarized itself with EDGAR, that entity can be confident that required filings will be timely because the public portion of the filing is immediately available on the Commission's website and the filer has received a confirming email. Such regulatory certainty is of benefit to registrants generally, including broker-dealers that are small entities.

With respect to the requirement to maintain a copy of the oath or affirmation, this requirement will not be unduly burdensome to small entities

[895] *See* Proposing Release, 88 FR at 24003.

[896] *See* Integrated Solutions Letter at 4.

[897] *See supra* sections IV.A, VII.A, X.C.2.b, and X.E.1.

[898] *See* Greg Medcraft, Chairman of Australian Finance Group Ltd (May 22, 2023).

[899] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this rulemaking, are set forth in Rule 0–10 under the Exchange Act, 17 CFR 240.0–10. *See* Exchange Act Release No. 18451 (Jan. 28, 1982), 47 FR 5215 (Feb. 4, 1982) (File No. AS–305).

[900] 17 CFR 240.17a–5(d).

[901] *See* 17 CFR 240.0–10(c). *See also* 17 CFR 240.0–10(i) (providing that a broker or dealer is affiliated with another person if: such broker or dealer controls, is controlled by, or is under common control with such other person; a person shall be deemed to control another person if that person has the right to vote 25% or more of the voting securities of such other person or is entitled to receive 25% or more of the net profits of such other person or is otherwise able to direct or cause the direction of the management or policies of such other person; or such broker or dealer introduces transactions in securities, other than registered investment company securities or interests or participations in insurance company separate accounts, to such other person, or introduces accounts of customers or other brokers or dealers, other than accounts that hold only registered investment company securities or interests or participations in insurance company separate accounts, to such other person that carries such accounts on a fully disclosed basis).

[902] 17 CFR 240.17a–5. The substantive amendments to the FOCUS Report that impact broker-dealers are limited to stand-alone swap dealers which are not expected to be small entities. The amendment to allow electronic signatures will not impact small broker-dealers because they will continue to have the option to use manual signatures.

[903] *See supra* section X.C.1.b.

[904] *See id.*

[905] *See supra* note 767767.

[906] *See supra* notes 764764 and 765765.

[907] *See supra* note 816816.

that are broker-dealers. A broker-dealer filing its annual reports in paper maintains a hard copy of the filing cover sheet as a record of the oath or affirmation. The amendment in paragraph (e)(2)(iii) of Rule 17a–5 is designed to ensure that this requirement is preserved in the context of a broker-dealer filing its annual reports electronically on EDGAR.

5. Significant Alternatives

The RFA directs the Commission to consider alternatives that would accomplish our stated objectives, while minimizing any significant economic impact on small entities. The Commission considered alternatives with respect to whether to utilize the EDGAR system. However, given that approximately half of all broker-dealers are voluntarily utilizing EDGAR for filing their respective annual audited reports, and that EDGAR is the primary system for companies and others submitting documents under the Federal securities laws and available for all registered filers, alternative electronic platforms would not be practical or efficient. Further, developing an alternative technology platform for intake of annual audited reports or change in SRO membership would be time consuming and expensive relative to using an existing Commission system that is in use by a large number of broker-dealers. The Commission considered exempting small entities from the EDGAR filing requirement and allowing small entities to make submissions via dedicated email or similar means, but there are significant efficiencies for Commission staff and other users of regulatory disclosure information in having the forms submitted to a single, uniform platform, and, as mentioned, EDGAR is the Commission's primary system for the receipt and publication (in the case of non-confidential submission) of such information. Exempting small entities from the EDGAR filing requirement would make aggregation of the data from regulatory disclosures less complete, which could detract from the usefulness of such data in illustrating the conditions of Commission-regulated entities in the financial markets.

The Commission also considered alternatives with respect to the structured data requirements, including the alternative of removing broker-dealers that are smaller entities from the structured data requirements.[908] However, given users of the information disclosed by broker-dealers such as investors, broker-dealer customers, other market participants, and/or regulatory users would be required to manually collect unstructured data in order to analyze it (or rely on third parties to do so), any cost savings arising from such an alternative would not justify the limitations and difficulties that would arise for these users of the information. .

Likewise, the Commission considered changing the actual forms themselves—either by consolidating or simplifying the information to be submitted—for small entities, but allowing a subset of entities to submit different forms—and accompanying information—would reduce the usability and comparability of the information contained in disclosures. The cost savings that might arise from devising different forms for small entities would not justify the limitations and difficulties that would arise for investors, market participants and/or regulatory users of the information.[909]

Finally, the Commission considered allowing small broker-dealers a longer timeframe to file on EDGAR so they have time to familiarize themselves with the system. However, the Commission does not believe an additional extension of time would provide meaningful additional benefit to these entities and could result in inordinately stale financial data being available to the Commission staff, investors and other market participants.

XII. Other Matters

Pursuant to the Congressional Review Act,[910] the Office of Information and Regulatory Affairs has designated these amendments as not a ''major rule'', as defined by 5 U.S.C. 804(2). The Commission considers the provisions of the final amendments to be severable to the fullest extent permitted by law. ''If parts of a regulation are invalid and other parts are not,'' courts ''set aside only the invalid parts unless the remaining ones cannot operate by themselves or unless the agency manifests an intent for the entire package to rise or fall together.'' [911] ''In such an inquiry, the presumption is always in favor of severability.'' [912] Consistent with these principles, while the Commission believes that all provisions of the final amendments are fully consistent with governing law, if any of the provisions of these amendments, or the application thereof to any person or circumstance, is held to be invalid, the Commission intends that such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application. In particular, the amendments relating to the requirement to file materials on EDGAR operate independently from the amendments requiring those materials to be filed or submitted in a structured data format.

Statutory Authority

The amendments contained in this release are being adopted under the authority in sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[913] sections 3, 12, 13, 14, 15, 15A, 15F, 17, 17A, 19, 23, 30, and 35A of the Securities Exchange Act of 1934,[914] section 319 of the Trust Indenture Act of 1939,[915] sections 8, 30, 31, and 38 of the Investment Company Act of 1940 [916] and section 761(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[917]

List of Subjects

17 CFR Part 202

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Administrative practice and procedure, Electronic filing, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Administrative practice and procedure, Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities, Swaps.

17 CFR Part 249

Brokers, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 249b

Brokers, Reporting and recordkeeping requirements, Securities.

[908] *See supra* section X.E.1.

[909] To be clear, this release would not require small entities to submit more—or different—information on particular forms. As mentioned previously, the release would not change the substantive content of Commission forms with this rulemaking, but would change the manner in which such forms are submitted to the Commission.

[910] 5 U.S.C. 801 *et seq.*

[911] *Bd. of Cnty. Commissioners of Weld Cnty.* v. *EPA,* 72 F.4th 284, 296 (D.C. Cir. 2023); *see K Mart Corp.* v. *Cartier, Inc.,* 486 U.S. 281, 294 (1988).

[912] *Cmty. for Creative Non-Violence* v. *Turner,* 893 F.2d 1387, 1394 (D.C. Cir. 1990).

[913] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[914] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78*o,* 78*o*–3, 78*o*–10, 78q, 78q–1, 78s, 78w, 78dd and 78*ll.*

[915] 15 U.S.C. 77sss.

[916] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

[917] 15 U.S.C. 8341.

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

■ 1. The general authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 77s, 77t, 77sss, 77uuu, 78d–1, 78u, 78w, 78*ll*(d), 80a–37, 80a–41, 80b–9, 80b–11, 7201 *et seq.,* unless otherwise noted.

* * * * *

■ 2. Amend § 202.3 by revising and republishing paragraphs (b)(2) and (3) to read as follows:

§ 202.3 Processing of filings.

* * * * *

(b) * * *

(2) Applications for registration as national securities exchanges, or exemption from registration as exchanges by reason of such exchanges' limited volume of transactions filed with the Commission are routed to the Division of Trading and Markets, which examines these applications to determine whether all necessary information has been supplied and whether all required financial statements and other documents have been furnished in proper form. Defective applications may be returned. The files of the Commission and other sources of information are considered to determine whether any person connected with the applicant appears to have engaged in activities which would warrant commencement of proceedings on the question of denial of registration. The staff confers with applicants and makes suggestions in appropriate cases for amendments and supplemental information. Where it appears appropriate in the public interest and where a basis therefore exists, denial proceedings may be instituted. Within 90 days of the date of publication of a notice of the filing of an application for registration as a national securities exchange, or exemption from registration by reason of such exchanges' limited volume of transactions (or within such longer period as to which the applicant consents), the Commission shall by order grant registration, or institute proceedings to determine whether registration should be denied as provided in § 240.19(a)(1) of this chapter.

(3) Notice forms for registration as national securities exchanges pursuant to section 6(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(1)) filed with the Commission are routed to the Division of Trading and Markets, which examines these notices to determine whether all necessary information has been supplied and whether all other required documents have been furnished in proper form. Defective notices may be returned.

PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 3. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78n–1, 78*o*(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

■ 4. Amend § 232.100 by revising paragraph (c) to read as follows:

§ 232.100 Persons and entities subject to mandated electronic filing.

* * * * *

(c) Persons or entities whose filings are subject to review by the Division of Trading and Markets; and

* * * * *

■ 5. Amend § 232.101 by:

■ a. Adding new paragraphs (a)(1)(xxxii), (xxxiii), (xxxiv), (xxxv), (xxxvi), (xxxvii), and (xxxviii);

■ b. Revising paragraph (c)(9); and

■ c. Revising paragraph (d).

The revisions and additions read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xxxii)(A) The annual reports filed with the Commission under § 240.17a–5(d) of this chapter, the supplemental reports and statements filed with the Commission under § 240.17a–5(k) of this chapter, the annual reports filed with the Commission under § 240.17a–12(b) of this chapter, the accountant's reports filed with the Commission under § 240.17a–12(k), (l), and (m) of this chapter, the reports filed with the Commission under § 240.17a–19 of this chapter, and the annual reports filed with the Commission under § 240.18a–7(c) of this chapter. The submissions must be made on EDGAR in the electronic format required by the EDGAR Filer Manual, as defined in § 232.11 (Rule 11 of Regulation S–T) and must be filed in accordance with the requirements of this part 232 (Regulation S–T);

(B) The reports filed and furnished, as applicable, with the Commission under § 240.17h–2T of this chapter. The submissions must be made on EDGAR in the electronic format required by the EDGAR filer Manual, as defined in Rule 11 of Regulation S–T, and must be filed in accordance with the requirements of Regulation S–T;

(xxxiii) Notices (and withdrawals of notices) filed with the Commission pursuant to § 240.3a71–3(d)(1)(vi) of this chapter (Rule 3a71–3(d)(1)(vi));

(xxxiv) Notices (and amendments, including notices of dispute termination) provided to the Commission pursuant to § 240.15fi–3(c) of this chapter (Rule 15fi–3(c));

(xxxv) Compliance reports submitted with the Commission pursuant to § 240.15fk–1(c)(2)(ii)(A) of this chapter (Rule 15fk–1(c)(2)(ii)(A));

(xxxvi) Form 1 (§ 249.1 of this chapter);

(xxxvii) Form 1–N (§ 249.10 of this chapter); and

(xxxviii) Form 15A (§ 249.801 of this chapter).

* * * * *

(c) * * *

(9) Exchange Act filings submitted to the Division of Trading and Markets other than those that are submitted in electronic format as mandated or permitted electronic submissions under paragraphs (a) and (b) of this section or that are submitted electronically in a filing system other than EDGAR;

* * * * *

(d) The following must be filed or submitted, as applicable, in electronic format:

(1) All documents, including any information with respect to which confidential treatment is requested, filed pursuant to section 13(n) (15 U.S.C. 78m(n)) and section 13(f) (15 U.S.C. 78m(f)) of the Exchange Act and the rules and regulations thereunder and the instructions to Form N–PX (§§ 249.326 and 274.129 of this chapter);

(2) All documents, including any information with respect to which confidential treatment is requested, filed pursuant to §§ 240.17a–5(d), 240.17a–5(k), 240.17a–12(b), 240.17a–12(k) through (m), 240.17a–19, 240.17h–2T, or 240.18a–7(c) of this chapter;

(3) All notices (and amendments, including notices of dispute termination), including any information with respect to which confidential treatment is requested, provided to the Commission pursuant to § 240.15fi–3(c) of this chapter; and

(4) All compliance reports, including any information with respect to which confidential treatment is requested, submitted to the Commission pursuant to § 240.15fk–1(c)(2)(ii)(A) of this chapter.

■ 6. Amend § 232.201 by revising paragraph (a) introductory text to read as follows:

§ 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA–1 (§ 249.100 of this chapter), a Form TA–2 (§ 249.102 of this chapter), a Form TA–W (§ 249.101 of this chapter), a Form D (§ 239.500 of this chapter), an application for an order under any section of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), an application for an order under any section of the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*), a notice or withdrawal of a notice filed with the Commission pursuant to Rule 3a71–3(d)(1)(vi) (§ 240.3a71–3(d)(1)(vi) of this chapter) under the Exchange Act (15 U.S.C. 78a *et seq.*), an Interactive Data File (as defined in § 232.11), an Asset Data File (as defined in § 232.11), or a Schedule 13D or Schedule 13G (§§ 240.13d–101 and 240.13d–102 of this chapter), the electronic filer may file the subject filing, under cover of Form TH (§§ 239.65, 249.447, 269.10 and 274.404 of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

* * * * *

■ 7. Amend § 232.202 by revising paragraph (a) introductory text to read as follows:

§ 232.202 Continuing hardship exemption.

(a) An electronic filer may apply in writing for a continuing hardship exemption if all or part of a filing, group of filings or submission, other than a Form ID (§§ 239.63, 249.446, 269.7, and 274.402 of this chapter), a Form D (§ 239.500 of this chapter), a notice or withdrawal of a notice filed with the Commission pursuant to § 240.3a71–3(d)(1)(vi) of this chapter (Rule 3a71–3(d)(1)(vi)) under the Exchange Act (15 U.S.C. 78a *et seq.*), or an Asset Data File (§ 232.11), otherwise to be filed or submitted in electronic format cannot be so filed or submitted, as applicable, without undue burden or expense. Such written application shall be made at least ten business days before the required due date of the filing(s) or submission(s) or the proposed filing or submission date, as appropriate, or within such shorter period as may be permitted. The written application shall contain the information set forth in paragraph (b) of this section.

* * * * *

■ 8. Amend § 232.405 by:
■ a. Revising the introductory text;
■ b. Revising and republishing paragraph (a);
■ c. Revising paragraphs (b)(1) introductory text, (b)(5), and Note 1 to § 232.405.

The revisions and additions read as follows:

§ 232.405 Interactive Data File submissions.

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), General Instruction F of § 249.311 (Form 11–K), §§ 240.15fk–1(c)(2)(ii)(A), 240.17a–5(d)(6)(i), 240.17a–5(k)(2), 240.17a–12(b)(6), 240.17a–12(k), 240.17a–12(l), 240.17a–12(m), 240.17h–2T(a)(2), and 240.18a–7(c)(6) of this chapter (Rules 15fk–1(c)(2)(ii)(A), 17a–5(d)(6)(i), 17a–5(k)(2), 17a–12(b)(6), 17a–12(k), 17a–12(l), 17a–12(m), 17h–2T(a)(2), and 18a–7(c)(6) under the Exchange Act), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of § 239.40 of this chapter (Form F–10), paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20–F), paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40–F), paragraph C.(6) of the General Instructions to § 249.306 of this chapter (Form 6–K), § 240.17ad–27(d) of this chapter (Rule 17ad–27(d) under the Exchange Act), Note D.5 of § 240.14a–101 of this chapter (Rule 14a–101 under the Exchange Act), Item 1 of § 240.14c–101 of this chapter (Rule 14c–101 under the Exchange Act), General Instruction L of § 240.14d–100 of this chapter (Rule 14d–100 under the Exchange Act), General Instruction I of § 249.333 of this chapter (Form F–SR), General Instruction C.3.(g) of §§ 239.15A and 274.11A of this chapter (Form N–1A), General Instruction I of §§ 239.14 and 274.11a–1 of this chapter (Form N–2), General Instruction C.3.(h) of §§ 239.17a and 274.11b of this chapter (Form N–3), General Instruction C.3.(h) of §§ 239.17b and 274.11c of this chapter (Form N–4), General Instruction C.3.(h) of §§ 239.17c and 274.11d of this chapter (Form N–6), General Instruction 2.(l) of § 274.12 of this chapter (Form N–8B–2), General Instruction 5 of § 239.16 of this chapter (Form S–6), General Instruction C.4 of §§ 249.331 and 274.128 of this chapter (Form N–CSR), General Instruction A of § 249.1 of this chapter (Form 1), General Instruction A of § 249b.200 of this chapter (Form CA–1), §§ 242.829 and 831 of this chapter (Rules 829 and 831 of Regulation SE), and the Registration Instructions to Form SBSEF (§ 249.1701 of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in note 1 to this section. This section imposes content, format and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

(a) *Content, format, and submission requirements—General.* An Interactive Data File must:

(1) Comply with the content, format, and submission requirements of this section;

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), General Instruction F of § 249.311 (Form 11–K), §§ 240.15fk–1(c)(2)(ii)(A), 240.17a–5(d)(6)(i), 240.17a–5(k)(2), 240.17a–12(b)(6), 240.17a–12(k), 240.17a–12(l), 240.17a–12(m), 240.17h–2T(a)(2), and 240.18a–7(c)(6) of this chapter (Rules 15fk–1(c)(2)(ii)(A), 17a–5(d)(6)(i), 17a–5(k)(2), 17a–12(b)(6), 17a–12(k), 17a–12(l), 17a–12(m), 17h–2T(a)(2), and 18a–7(c)(6) under the Exchange Act), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of § 239.40 of this chapter (Form F–10), paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20–F), paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40–F), paragraph C.(6) of the General Instructions to § 249.306 of this chapter (Form 6–K), § 240.17ad–27(d) of this chapter (Rule 17ad–27(d) under the Exchange Act), Note D.5 of § 240.14a–101 of this chapter (Rule 14a–101 under the Exchange Act), Item 1 of § 240.14c–101 of this chapter (Rule 14c–101 under the Exchange Act), General Instruction L of § 240.14d–100 of this chapter (Rule 14d–100 under the Exchange Act), General Instruction C.3.(g) of §§ 239.15A and 274.11A of this chapter (Form N–1A), General Instruction I of §§ 239.14 and 274.11a–1 of this chapter (Form N–2), General Instruction C.3.(h) of §§ 239.17a and 274.11b of this chapter (Form N–3), General Instruction C.3.(h) of §§ 239.17b and 274.11c of this chapter (Form N–4), General Instruction C.3.(h) of §§ 239.17c and 274.11d of this chapter (Form N–6), General Instruction 2.(*l*) of § 274.12 of this chapter (Form N–8B–2), General Instruction 5 of § 239.16 of this chapter (Form S–6), General Instruction C.4 of §§ 249.331 and 274.128 of this chapter (Form N–CSR), General Instruction A of

§ 249.1 of this chapter (Form 1), General Instruction A of § 249b.200 of this chapter (Form CA–1), §§ 242.829 and 242.831 of this chapter (Rules 829 and 831 of Regulation SE), and the Registration Instructions to Form SBSEF (§ 249.1701 of this chapter), as applicable;

(3) Be submitted using Inline XBRL:

(i) If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a separate account as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a registered non-variable annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 230.405), a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), an entity subject to §§ 240.15fk–1, 240.17a–5, 240.17a–12, 240.17h–2T, or 240.18a–7 of this chapter (Rule 15fk–1, 17a–5, 17a–12, 17h–2T, or 18a–7 under the Exchange Act), an exchange as defined in 15 U.S.C. 78c(a)(1) (Section 3(a)(1) of the Exchange Act), or a clearing agency as defined in 15 U.S.C. 78c(a)(23)(A) (Section 3(a)(23)(A) of the Exchange Act), or subject to §§ 242.800 through 242.835 (Regulation SE), and is not within one of the categories specified in paragraph (f)(1)(i) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to:

(A) A filing that contains the disclosure this section requires to be tagged; or

(B) An amendment to a filing that contains the disclosure this section requires to be tagged if the amendment is filed no more than 30 days after the earlier of the due date or filing date of the filing and the Interactive Data File is the first Interactive Data File the electronic filer submits; or

(ii) If the electronic filer is a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a separate account (as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a registered non-variable annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 230.405), a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), an entity subject to §§ 240.15fk–1, 240.17a–5, 240.17a–12, 240.17h–2T, or 240.18a–7 of this chapter (Rule 15fk–1, 17a–5, 17a–12, 17h–2T, or 18a–7 under the Exchange Act), an exchange as defined in 15 U.S.C. 78c(a)(1) (Section 3(a)(1) of the Exchange Act), or a clearing agency as defined in 15 U.S.C. 78c(a)(23)(A) (Section 3(a)(23)(A) of the Exchange Act), or is subject to §§ 242.800 through 242.835 (Regulation SE), and is not within one of the categories specified in paragraph (f)(1)(ii) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to a filing that contains the disclosure this section requires to be tagged; and

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), General Instruction F of § 249.311 of this chapter (Form 11–K), §§ 240.15fk–1(c)(2)(ii)(A), 240.17a–5(d)(6)(i), 240.17a–5(k)(2), 240.17a–12(b)(6), 240.17a–12(k), 240.17a–12(l), 240.17a–12(m), 240.17h–2T(a)(2), and 240.18a–7(c)(6) of this chapter (Rules 15fk–1(c)(2)(ii)(A), 17a–5(d)(6)(i), 17a–5(k)(2), 17a–12(b)(6), 17a–12(k), 17a–12(l), 17a–12(m), 17h–2T(a)(2), and 18a–7(c)(6) under the Exchange Act), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of § 239.40 of this chapter (Form F–10), § 240.13a–21 of this chapter (Rule 13a–21 under the Exchange Act), paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20–F), paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40–F), paragraph C.(6) of the General Instructions to § 249.306 of this chapter (Form 6–K), § 240.17ad–27(d) of this chapter (Rule 17ad–27(d) under the Exchange Act), Note D.5 of § 240.14a–101 of this chapter (Rule 14a–101 under the Exchange Act), Item 1 of § 240.14c–101 of this chapter (Rule 14c–101 under the Exchange Act), General Instruction L of § 240.14d–100 of this chapter (Rule 14d–100 under the Exchange Act), General Instruction I to § 249.333 of this chapter (Form F–SR), General Instruction C.3.(g) of §§ 239.15A and 274.11A of this chapter (Form N–1A), General Instruction I of §§ 239.14 and 274.11a–1 of this chapter (Form N–2), General Instruction C.3.(h) of §§ 239.17a and 274.11b of this chapter (Form N–3), General Instruction C.3.(h) of §§ 239.17b and 274.11c of this chapter (Form N–4), General Instruction C.3.(h) of §§ 239.17c and 274.11d of this chapter (Form N–6); General Instruction 2.(*l*) of § 274.12 of this chapter (Form N–8B–2); General Instruction 5 of § 239.16 of this chapter (Form S–6); General Instruction C.4 of §§ 249.331 and 274.128 of this chapter (Form N–CSR); General Instruction A of § 249.1 of this chapter (Form 1); General Instruction A of § 249b.200 of this chapter (Form CA–1); §§ 242.829 and 831 of this chapter (Rules 829 and 831 of Regulation SE); or the Registration Instructions to Form SBSEF (§ 249.1701 of this chapter), as applicable.

(b) * * *

(1) If the electronic filer is not a management investment company registered under 15 U.S.C. 80a *et seq.* (the Investment Company Act of 1940), a separate account as defined in 15 U.S.C. 77b(a)(14) (Section 2(a)(14) of the Securities Act) registered under the Investment Company Act of 1940, a registered non-variable annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 230.405), a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), an entity subject to §§ 240.15fk–1, 240.17a–5, 240.17a–12, 240.17h–2T, or 240.18a–7 of this chapter (Rule 15fk–1, 17a–5, 17a–12, 17h–2T, or 18a–7 under the Exchange Act), an exchange as defined in 15 U.S.C. 78c(a)(1) (Section 3(a)(1) of the Exchange Act), or a clearing agency as defined in 15 U.S.C. 78c(a)(23)(A) (Section 3(a)(23) of the Exchange Act), an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the following categories:

* * * * *

(5) If an electronic filer is an entity subject to §§ 240.15fk–1, 240.17a–5, 240.17a–12, 240.17h–2T, or 240.18a–7 of this chapter (Rule 15fk–1, 17a–5, 17a–12, 17h–2T, or 18a–7 under the Exchange Act), an exchange as defined in 15 U.S.C. 78c(a)(1) (Section 3(a)(1) of the Exchange Act), a clearing agency as defined in 15 U.S.C. 78c(a)(23)(A) (Section 3(a)(23)(A) of the Exchange Act), or is subject to §§ 242.800 through 242.835 (Regulation SE), an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the following categories, as applicable:

(i) For electronic filers of § 249.617 of this chapter (Part III of Form X–17A–5): the disclosures required by Items (a) through (y) of that Form.

(ii) The disclosure provided pursuant to Item 4 of § 249.328T of this chapter (Form 17–H).

(iii) The report provided pursuant to § 240.15fk–1(c)(2)(ii)(A) of this chapter (Rule 15fk–1(c)(2)(ii)(A) under the Exchange Act).

(iv) The exhibits specified by General Instruction A to § 249.1 of this chapter (Form 1).

(v) The disclosure provided pursuant to Schedule A and Exhibits C, F, H, J, K, L, M, O, R, and S to § 249b.200 of this chapter (Form CA–1).

(vi) The information provided pursuant to § 240.17ad–27 of this chapter (Rule 17ad–27 under the Exchange Act).

(vii) For electronic filers subject to Regulation SE, the content of documents required to be filed electronically under §§ 242.829 and 242.831 of this chapter (Rules 829 and 831 of Regulation SE); and the Registration Instructions to § 249.1701 of this chapter (Form SBSEF), as applicable.

* * * * *

Note 1 to § 232.405: Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to §§ 239.11 of this chapter (Form S–1), 239.13 of this chapter (Form S–3), 239.25 of this chapter (Form S–4), 239.18 of this chapter (Form S–11), 239.31 of this chapter (Form F–1), 239.33 of this chapter (Form F–3), 239.34 of this chapter (Form F–4), 249.310 of this chapter (Form 10–K), 249.308a of this chapter (Form 10–Q), and 249.308 of this chapter (Form 8–K). General Instruction F of § 249.311 of this chapter (Form 11–K) specifies the circumstances under which an Interactive Data File must be submitted, and the circumstances under which it is permitted to be submitted, with respect to Form 11–K. Paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of § 239.40 of this chapter (Form F–10) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form F–10. Paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20–F) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form 20–F. Paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40–F) and Paragraph C.(6) of the General Instructions to § 249.306 of this chapter (Form 6–K) specify the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to §§ 249.240f (Form 40–F) and 249.306 (Form 6–K) of this chapter. Note D.5 of § 240.14a–101 of this chapter (Schedule 14A) and Item 1 of § 240.14c–101 of this chapter (Schedule 14C) specify the circumstances under which an Interactive Data File must be submitted with respect to Schedules 14A and 14C. General Instruction L of § 240.14d–100 of this chapter (Schedule TO) specifies the circumstances under which an Interactive Data File must be submitted with respect to Schedule TO. Section 240.13a–21 of this chapter (Rule 13a–21 under the Exchange Act) and General Instruction I to § 249.333 of this chapter (Form F–SR) specify the circumstances under which an Interactive Data File must be submitted, with respect to Form F–SR. §§ 242.829 and 242.831 of this chapter (Rules 829 and 831 of Regulation SE) and the Registration Instructions to § 249.1701 of this chapter (Form SBSEF), as applicable, specify the circumstances under which an Interactive Data File must be submitted with respect to filings made under Regulation SE. Item 601(b)(101) of Regulation S–K, paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of Form F–10, paragraph 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.(15) of the General Instructions to Form 40–F, and paragraph C.(6) of the General Instructions to Form 6–K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with 17 CFR 210.6–01 through 210.6–10 (Article 6 of Regulation S–X). For an issuer that is a management investment company or separate account registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a registered non-variable annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 230.405), a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), General Instruction 2.(l) of Form N–8B–2 (§ 274.12 of this chapter), General Instruction 5 of § 239.16 of this chapter (Form S–6), and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted. For entities subject to §§ 240.15fk–1, 240.17a–5, 240.17a–12, 240.17h–2T, or 240.18a–7 of this chapter (Rule 15fk–1, 17a–5, 17a–12, 17h–2T, or 18a–7 under the Exchange Act), §§ 240.15fk–1(c)(2)(ii)(A), 240.17a–5(d)(6)(i), 240.17a–5(k)(2), 240.17a–12(b)(6), 240.17a–12(k), 240.17a–12(l), 240.17a–12(m), 240.17h–2T(a)(2), and 240.18a–7(c)(6) of this chapter (Rules 15fk–1(c)(2)(ii)(A), 17a–5(d)(6)(i), 17a–5(k)(2), 17a–12(b)(6), 17a–12(k), 17a–12(l), 17a–12(m), 17h–2T(a)(2), and 18a–7(c)(6) under the Exchange Act), as applicable, specify the circumstances under which an Interactive Data File must be submitted. For an exchange as defined in 15 U.S.C. 78c(a)(1) (Section 3(a)(1) of the Exchange Act), General Instruction A of § 249.1 of this chapter (Form 1) specifies the circumstances under which an Interactive Data File must be submitted. For a clearing agency as defined in 15 U.S.C. 78c(a)(23)(A) (Section 3(a)(23)(A) of the Exchange Act), General Instruction A of § 249.200b of this chapter (Form CA–1) specifies the circumstances under which an Interactive Data File must be submitted with respect to § 249.200b of this chapter (Form CA–1), and § 240.17ad–27(d) of this chapter (Rule 17ad–27(d) under the Exchange Act) specify the circumstances under which an Interactive Data File must be submitted with respect to the reports required under § 249.200b of this chapter (Form CA–1) and § 240.17ad–27 of this chapter (Rule 17ad–27 under the Exchange Act).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 9. Amend the authority citation for part 240 by:

■ a. Removing the authority citation for §§ 240.15Fh–1 through 240.15Fh–6 and 240.15Fk–1; and

■ b. Adding an authority citation for §§ 240.15Fh–1 through 240.15Fh–6 and 240.15fk–1 in numerical order.

The addition reads as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–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, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 1681w(a)(1), 6801–6809, 6825, 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; 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.

* * * * *

Sections 240.3a67–10, 240.3a71–3, 240.3a71–4, and 240.3a71–5 are also issued under Pub. L. 111–203, section 761(b), 124 Stat. 1754 (2010), and 15 U.S.C. 78dd(c).

Sections 240.3a71–3 and 240.3a71–5 are also issued under Pub. L. 111–203, sec. 761(b), 124 Stat. 1754 (2010), and 15 U.S.C. 78dd(c).

* * * * *

Sections 240.15Fh–1 through 240.15Fh–6 and 240.15fk–1 are also issued under sec. 943, Pub. L. 111–203, 124 Stat. 1376.

* * * * *

Section 240.19b–4 is also issued under 12 U.S.C. 5465(e).

* * * * *

■ 10. Amend § 240.3a71–3 by revising paragraph (d)(1)(vi) to read as follows:

§ 240.3a71–3 Cross-border security-based swap dealing activity.

* * * * *

(d) * * *

(1) * * *

(vi) *Notices and withdrawals of notices by registered entity.* Before an associated person of the registered entity described in paragraph (d)(1)(i) of this section commences the activity described in paragraph (d)(1)(i) of this section, such registered entity shall have filed a notice with the Commission (that has not been withdrawn) that its associated persons may conduct such activity. Such registered entity shall file this notice electronically on EDGAR in accordance with the EDGAR Filer Manual, as defined in 17 CFR 232.11 (Rule 11 of Regulation S–T), and in accordance with the requirements of 17 CFR part 232 (Regulation S–T). A registered entity whose associated persons will no longer conduct the activity described in paragraph (d)(1)(i) of this section may withdraw, and an entity that no longer is described in paragraph (d)(1) of this section shall promptly withdraw, its previously filed notice by filing a withdrawal electronically on EDGAR in accordance with the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T, and in accordance with the requirements of Regulation S–T. Such notices and withdrawals shall be publicly disseminated through the Commission's EDGAR system.

* * * * *

■ 11. Amend § 240.6a–1 by adding paragraph (e) to read as follows:

§ 240.6a–1 Application for registration as a national securities exchange or exemption from registration based on limited volume.

* * * * *

(e) Filings on Form 1 (§ 249.1 of this chapter) submitted pursuant to this chapter shall be filed electronically on EDGAR in accordance with the requirements of 17 CFR part 232 (Regulation S–T). Except as otherwise specified on Form 1, the disclosure required to be included in Exhibits D, E, and I must be provided as an Interactive Data File in accordance with § 232.405 of this chapter (Rule 405 of Regulation S–T).

■ 12. Amend § 240.6a–2 by revising and republishing paragraphs (a), through (d) to read as follows:

§ 240.6a–2 Amendments to application.

(a) A national securities exchange, or an exchange exempted from such registration based on limited volume, shall electronically file an amendment to Form 1 (§ 249.1 of this chapter), in accordance with § 240.6a–1(e), which shall set forth the nature and effective date of the action taken and shall provide any new information and correct any information rendered inaccurate, on Form 1 (§ 249.1 of this chapter), within 10 days after any action is taken that renders inaccurate, or that causes to be incomplete, any of the following:

(1) Information filed on Sections I and II of Form 1, or amendment thereto; or

(2) Information filed as part of Exhibits C, F, G, H, J, K or M, or any amendments thereto.

(b) On or before June 30 of each year, a national securities exchange, or an exchange exempted from such registration based on limited volume, shall electronically file, as an amendment to Form 1, in accordance with § 240.6a–1(e), the following:

(1) Exhibits D and I as of the end of the latest fiscal year of the exchange; and

(2) Exhibits K, M, and N, which shall be up to date as of the latest date practicable within 3 months of the date the amendment is filed.

(c) On or before June 30, 2025, and every three years thereafter, a national securities exchange, or an exchange exempted from such registration based on limited volume, shall electronically file, as an amendment to Form 1, in accordance with § 240.6a–1(e), complete Exhibits A, B, C, and J. The information filed under this paragraph (c) shall be current as of the latest practicable date, but shall, at a minimum, be up to date within 3 months as of the date the amendment is filed.

(d)(1) If an exchange, on an annual or more frequent basis, publishes, or cooperates in the publication of, any of the information required to be filed by paragraphs (b)(2) and (c) of this section, in lieu of filing such information, an exchange may:

(i) Identify on Form 1 the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price of such publication; and

(ii) Certify on Form 1 to the accuracy of such information as of its publication date.

(2) If an exchange keeps the information required under paragraphs (b)(2) and (c) of this section up to date and makes it available to the Commission and the public upon request, in lieu of filing such information, an exchange may certify on Form 1 that the information is kept up to date and is available to the Commission and the public upon request.

(3) If the information required to be filed under paragraphs (b)(2) and (c) of this section is available continuously on an internet website controlled by an exchange, in lieu of filing such information with the Commission, such exchange may:

(i) Provide on Form 1 the Uniform Resource Locator(s) (URL(s)) of the location(s) on the internet website where such information may be found; and

(ii) Certify on Form 1 that the information available at such location(s) is accurate as of its date and is free and accessible (without any encumbrances or restrictions) by the general public.

* * * * *

■ 13. Amend § 240.6a–3 by revising and republishing paragraph (a) and revising paragraph (b) introductory text to read as follows:

§ 240.6a–3 Supplemental material to be filed by exchanges.

(a)(1) A national securities exchange, or an exchange exempted from such registration based on limited volume, shall file with the Commission any material (including notices, circulars, bulletins, lists, and periodicals) issued or made generally available to members of, or participants or subscribers to, the exchange. Such material shall be electronically filed with the Commission on Form 1 (§ 249.1 of this chapter), in accordance with § 240.6a–1(e), within 10 days after issuing or making such material available to members, participants or subscribers.

(2) If the information required to be filed under paragraph (a)(1) of this section is available continuously on an internet website controlled by an exchange, in lieu of filing such information with the Commission, such exchange may:

(i) Provide on Form 1 the Uniform Resource Locator(s) (URL(s)) of the location(s) on the internet website where such information may be found; and

(ii) Certify on Form 1 that the information available at such location(s) is accurate as of its date and is free and accessible (without any encumbrances or restrictions) by the general public.

(b) Within 15 days after the end of each calendar month, a national securities exchange or an exchange exempted from such registration based on limited volume, shall electronically file on Form 1 (§ 249.1 of this chapter), in accordance with § 240.6a–1(e), a report concerning the securities sold on such exchange during the calendar month. Such report shall set forth:

* * * * *

■ 14. Revise and republish § 240.6a–4 to read as follows:

§ 240.6a–4 Notice of registration under Section 6(g) of the Act, amendment to such notice, and supplemental materials to be filed by exchanges registered under Section 6(g) of the Act.

(a) *Notice of registration.* (1) An exchange may register as a national securities exchange solely for the purposes of trading security futures products by filing Form 1–N (§ 249.10 of this chapter) (''notice of registration''), in accordance with the instructions contained therein, if:

(i) The exchange is a board of trade, as that term is defined in the Commodity Exchange Act (7 U.S.C. 1a(6)), that:

(A) Has been designated a contract market by the Commodity Futures Trading Commission and such designation is not suspended by order of the Commodity Futures Trading Commission; or

(B) Is registered as a derivative transaction execution facility under Section 6(a) of the Commodity Exchange Act (7 U.S.C. 8(a)) and such registration is not suspended by the Commodity Futures Trading Commission; and

(ii) Such exchange does not serve as a marketplace for transactions in securities other than:

(A) Security futures products; or

(B) Futures on exempted securities or on groups or indexes of securities or options thereon that have been authorized under Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(C)).

(2) Promptly after the discovery that any information filed on Form 1–N (§ 249.10 of this chapter) was inaccurate when filed, the exchange shall file with the Commission an amendment correcting such inaccuracy.

(b) *Amendment to notice of registration.* (1) A national securities exchange registered pursuant to Section 6(g)(1) of the Act (15 U.S.C. 78f(g)(1)) (''Security Futures Product Exchange'') shall file an amendment to Form 1–N (§ 249.10 of this chapter), which shall set forth the nature and effective date of the action taken and shall provide any new information and correct any information rendered inaccurate, on Form 1–N (§ 249.10 of this chapter), within:

(i) Ten days after any action is taken that renders inaccurate, or that causes to be incomplete, any information filed on Sections I through III of Form 1–N (§ 249.10 of this chapter), or amendment thereto; or

(ii) 30 days after any action is taken that renders inaccurate, or that causes to be incomplete, any information filed as part of Exhibit F to Form 1–N (§ 249.10 of this chapter), or any amendments thereto.

(2) A Security Futures Product Exchange shall maintain records relating to changes in information required in Exhibits C and E to Form 1–N (§ 249.10 of this chapter) which shall be current of as of the latest practicable date, but shall, at a minimum, be up-to-date within 30 days. A Security Futures Product Exchange shall make such records available to the Commission and the public upon request.

(3) On or before June 30, 2023, and by June 30 every year thereafter, a Security Futures Product Exchange shall file, as an amendment to Form 1–N (§ 249.10 of this chapter), Exhibits F, H, and I, which shall be current as of the latest practicable date, but shall, at a minimum, be up to date within three months as of the date the amendment is filed.

(4) On or before June 30, 2025, and by June 30 every three years thereafter, a Security Futures Product Exchange shall file, as an amendment to Form 1–N (§ 249.10 of this chapter), complete Exhibits A, B, C, and E, which shall be current as of the latest practicable date, but shall, at a minimum, be up to date within three months as of the date the amendment is filed.

(5)(i) If a Security Futures Product Exchange, on an annual or more frequent basis, publishes, or cooperates in the publication of, any of the information required to be filed by paragraphs (b)(3) and (4) of this section, in lieu of filing such information, a Security Futures Product Exchange may:

(A) Identify on Form 1–N the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price of such publication; and

(B) Certify on Form 1–N to the accuracy of such information as of its publication date.

(ii) If a Security Futures Product Exchange keeps the information required under paragraphs (b)(3) and (4) of this section up to date and makes it available to the Commission and the public upon request, in lieu of filing such information, a Security Futures Product Exchange may certify on Form 1–N that the information is kept up to date and is available to the Commission and the public upon request.

(iii) If the information required to be filed under paragraphs (b)(3) and (4) of this section is available continuously on an internet website controlled by a Security Futures Product Exchange, in lieu of filing such information with the Commission, such Security Futures Product Exchange may:

(A) Provide on Form 1–N the Uniform Resource Locator(s) (URL(s)) of the location(s) of the internet website where such information may be found; and

(B) Certify on Form 1–N that the information available at such location(s) is accurate as of its date and is free and accessible (without any encumbrances or restrictions) by the general public.

(6)(i) The Commission may exempt a Security Futures Product Exchange from filing the amendment required by this section for any affiliate or subsidiary listed in Exhibit C to Form 1–N (§ 249.10 of this chapter), as amended, that either:

(A) Is listed in Exhibit C to Form 1 (§ 249.1 of this chapter) or to Form 1–N (§ 249.10 of this chapter), as amended, of one or more other national securities exchanges; or

(B) Was an inactive affiliate or subsidiary throughout the affiliate's or subsidiary's latest fiscal year.

(ii) Any such exemption may be granted upon terms and conditions the Commission deems necessary or appropriate in the public interest or for the protection of investors, provided however, that at least one national securities exchange shall be required to file the amendments required by this section for an affiliate or subsidiary described in paragraph (b)(6)(i) of this section.

(7) If a Security Futures Product Exchange has filed documents with the Commodity Futures Trading Commission, to the extent that such documents contain information satisfying the Commission's informational requirements, copies of such documents may be filed with the Commission in lieu of the required written notice.

(c) *Supplemental material to be filed by Security Futures Product Exchanges.* (1)(i) A Security Futures Product Exchange shall file with the Commission any material related to the trading of security futures products (including notices, circulars, bulletins, lists, and periodicals) issued or made generally available to members of, participants in, or subscribers to, the exchange. Such material shall be filed with the Commission within ten days after issuing or making such material available to members, participants, or subscribers.

(ii) If the information required to be filed under paragraph (c)(1)(i) of this section is available continuously on an internet website controlled by an exchange, in lieu of filing such

information with the Commission, such exchange may:

(A) Provide on Form 1–N the Uniform Resource Locator(s) (URL(s)) of the location(s) of the internet website where such information may be found; and

(B) Certify on Form 1–N that the information available at such location(s) is accurate as of its date and is free and accessible (without any encumbrances or restrictions) by the general public.

(2) Within 15 days after the end of each calendar month, a Security Futures Product Exchange shall file a report concerning the security futures products traded on such exchange during the previous calendar month. Such a report shall state:

(i) For each contract of sale for future delivery of a single security, the number of contracts traded on such exchange during the relevant calendar month and the total number of shares underlying such contracts traded; and

(ii) For each contract of sale for future delivery of a narrow-based security index, the number of contracts traded on such exchange during the relevant calendar month and the total number of shares represented by the index underlying such contracts traded.

(d) Filings on Form 1–N (§ 249.10 of this chapter) submitted pursuant to this section shall be filed electronically on EDGAR in accordance with the requirements of 17 CFR part 232 (Regulation S–T).

■ 15. Redesignate § 240.15Aa–1 as § 240.15aa–1 and revise newly redesignated § 240.15aa–1 to read as follows:

§ 240.15aa–1 Registration of a national or an affiliated securities association.

Any application for registration of an association as a national, or as an affiliated, securities association shall be submitted on Form 15A. Filings on Form 15A (§ 249.801 of this chapter) submitted pursuant to this section shall be filed electronically on EDGAR in accordance with the requirements of 17 CFR part 232 (Regulation S–T).

■ 16. Redesignate § 240.15Aj–1 as § 240.15aa–2 and revise and republish newly redesignated § 240.15aa–2 to read as follows.

§ 240.15aa–2 Amendments and supplements to registration statements of securities associations.

Every association applying for registration or registered as a national securities association or as an affiliated securities association shall keep its registration statement up-to-date in the manner prescribed below:

(a) *Amendments.* Promptly after the discovery of any inaccuracy in the registration statement or in any amendment or supplement thereto the association shall file with the Commission an amendment correcting such inaccuracy.

(b) *Current supplements.* Promptly after any change which renders no longer accurate any information contained or incorporated in the registration statement or in any amendment or supplement thereto the association shall file with the Commission a current supplement setting forth such change, except that:

(1) No current supplements need be filed with respect to changes in the information called for in Exhibit B.

(2) Supplements setting forth changes in the information called for in Exhibit C need not be filed until 10 days after the calendar month in which the changes occur.

(3) If changes in the information called for in Items (1) and (2) of Exhibit C are reported in any record which is published at least once a month by the association and promptly filed with the Commission, no current supplement need be filed with respect thereto.

(c) *Annual supplements.* (1) Promptly after March 1 of each year, the association shall file with the Commission an annual consolidated supplement as of such date on Form 15A (§ 249.801 of this chapter) except that:

(i) If the securities association publishes or cooperates in the publication of the information required in Items 6(a) and 6(b) of Form 15A on an annual or more frequent basis, in lieu of filing such an item the securities association may:

(A) Identify on Form 15A the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price thereof; and

(B) Certify on Form 15A to the accuracy of such information as of its date.

(ii) Promptly after March 1, 2025, and every three years thereafter each association shall file complete Exhibit A to Form 15A. The information contained in this exhibit shall be up-to-date as of the latest practicable date within 3 months of the date on which these exhibits are filed. If the association publishes or cooperates in the publication of the information required in this exhibit on an annual or more frequent basis, in lieu of filing such exhibit the association may:

(A) Identify on Form 15A the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price thereof; and

(B) Certify on Form 15A to the accuracy of such information as of its date. If a securities association keeps the information required in the exhibit up-to-date and makes it available to the Commission and the public upon request, in lieu of filing such an exhibit a securities association may certify on Form 15A that the information is kept up-to-date and is available to the Commission and the public upon request.

(2) Promptly after the close of each fiscal year of the association, it shall file with the Commission a supplement setting forth its balance sheet as of the close of such year and its income and expense statement for such year.

(d) *Filing, dating, etc.* (1) Each amendment or supplement, including the annual consolidated supplement, shall be submitted electronically on Form 15A in a manner prescribed in § 240.15aa–1 (Rule 15aa–1).

(2) One amendment or supplement may include any number of changes. In addition to the formal filing of amendments and supplements above described, each association shall electronically file with the Commission copies of any notices, reports, circulars, loose-leaf insertions, riders, new additions, lists or other records of changes covered by amendments or supplements when, as and if such records are made available to members of the association.

■ 17. Redesignate § 240.15Fi–3 as § 240.15fi–3 and amend newly redesignated § 240.15fi–3 by revising paragraph (c) to read as follows:

§ 240.15fi–3 Security-based swap portfolio reconciliation.

* * * * *

(c) *Reporting of security-based swap valuation disputes*—(1) *Notice requirement.* Each security-based swap dealer and major security-based swap participant shall promptly notify the Commission, electronically through the Commission's EDGAR system, in accordance with the EDGAR Filer Manual, as defined in § 232.11 of this chapter (Rule 11 of Regulation S–T), and in accordance with the requirements of 17 CFR part 232 (Regulation S–T), and any applicable prudential regulator, in a form and manner acceptable to such applicable prudential regulator, of any security-based swap valuation dispute in excess of $20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level, if not resolved within:

(i) Three business days, if the dispute is with a counterparty that is a security-

based swap dealer or major security-based swap participant; or

(ii) Five business days, if the dispute is with a counterparty that is not a security-based swap dealer or major security-based swap participant.

(2) *Amendments.* Each security-based swap dealer and major security-based swap participant shall notify the Commission, electronically through the Commission's EDGAR system, in accordance with the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T, and in accordance with the requirements of Regulation S–T, and any applicable prudential regulator, in a form and manner acceptable to such applicable prudential regulator, if the amount of any security-based swap valuation dispute that was the subject of a previous notice made pursuant to paragraph (c)(1) of this section increases or decreases by more than $20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level. Such amended notice shall be provided to the Commission and any applicable prudential regulator no later than the last business day of the calendar month in which the applicable security-based swap valuation dispute increases or decreases by the applicable dispute amount.

* * * * *

■ 18. Redesignate § 240.15Fk–1 as § 240.15fk–1 and amend newly redesignated § 240.15fk–1 by revising paragraph (c)(2)(ii)(A) to read as follows:

§ 240.15fk–1 Designation of chief compliance officer for security-based swap dealers and major security-based swap participants.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(A) Be submitted to the Commission electronically through the EDGAR system as an Interactive Data File in accordance with 17 CFR 232.405 (Rule 405 of Regulation S–T) within 30 days following the deadline for filing the security-based swap dealer's or major security-based swap participant's annual financial report with the Commission pursuant to section 15F of the Act and rules and regulations thereunder;

* * * * *

■ 19. Amend § 240.17a–5 by:

■ a. Revising paragraphs (a)(2) and (d)(6);

■ b. Adding new paragraph (e)(2)(iii);

■ c. Revising paragraphs (e)(3), (f)(3)(v)(B), (i)(1)(ii), and (k);

■ d. Removing paragraph (o);

■ e. Redesignating paragraph (p) as paragraph (o); and

■ f. Adding new paragraph (p).

The revisions and additions read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(a) * * *

(2) The reports provided for in this paragraph (a) that must be filed with the Commission will be considered filed when received at the Commission's principal office in Washington, DC, and the regional office of the Commission for the region in which the broker or dealer has its principal place of business. All reports filed pursuant to this paragraph (a) will be deemed confidential for the purposes of section 24(b) of the Act.

* * * * *

(d) * * *

(6)(i) *Filing with the Commission.* The annual reports must be filed with the Commission electronically on EDGAR in accordance with the EDGAR Filer Manual, as defined in 17 CFR 232.11 (Rule 11 of Regulation S–T) and must be filed in accordance with the requirements of 17 CFR part 232 (Regulation S–T). The annual reports must be provided as an Interactive Data File in accordance with 17 CFR 232.405 (Rule 405 of Regulation S–T).

(ii) *Filing with other organizations.* The annual reports also must be filed with the designated examining authority for the broker or dealer and with the Securities Investor Protection Corporation (''SIPC'') if the broker or dealer is a member of SIPC. Copies of the reports must be provided to all self-regulatory organizations of which the broker or dealer is a member, unless the self-regulatory organization by rule waives this requirement.

(e) * * *

(2) * * *

(iii) The broker or dealer must keep the original oath or affirmation for a period of not less than six years, the first two years in an easily accessible place and in accordance with the requirements of § 240.17a–4 of this chapter (Rule 17a–4) under the Exchange Act.

(3) The annual reports filed under paragraph (d) of this section may be filed as:

(i) One public document; or

(ii) Two documents:

(A) A document consisting of the Statement of Financial Condition, the notes to the Statement of Financial Condition, and the report of the independent public accountant covering the Statement of Financial Condition, which is not confidential; and

(B) A document containing the balance of the annual reports for which confidential treatment may be requested and which will be deemed confidential for the purposes of section 24(b) of the Act. However, the annual reports, including the confidential portions, will be available for official use by any official or employee of the U.S. or any State, by national securities exchanges and registered national securities associations of which the broker or dealer filing such a report is a member, by the Public Company Accounting Oversight Board, and by any other person if the Commission authorizes disclosure of the annual reports to that person. Nothing contained in this paragraph (e)(3) may be construed to be in derogation of the rules of any registered national securities association or national securities exchange that give to customers of a broker or dealer the right, upon request to the broker or dealer, to obtain information relative to its financial condition.

(f) * * *

(3) * * *

(v) * * *

(B) The details of any issues arising during the 24 months (or the period of the engagement, if less than 24 months) preceding the termination or new engagement relating to any matter of accounting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission, which issues, if not resolved to the satisfaction of the former independent public accountant, would have caused the independent public accountant to make reference to them in the report of the independent public accountant. The issues required to be reported include both those resolved to the former independent public accountant's satisfaction and those not resolved to the former accountant's satisfaction. Issues contemplated by this section are those that occur at the decision-making level—that is, between principal financial officers of the broker or dealer and personnel of the accounting firm responsible for rendering its report. The notice must also state whether the accountant's report filed under paragraph (d)(1)(i)(C) of this section for any of the past two fiscal years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainties, audit scope, or accounting principles, and must describe the nature of each such adverse opinion, disclaimer of opinion, or qualification. The broker or dealer must also request the former independent public accountant to furnish the broker or dealer with a letter addressed to the

Commission stating whether the independent public accountant agrees with the statements contained in the notice of the broker or dealer and, if not, stating the respects in which the independent public accountant does not agree. The broker or dealer must file three copies of the notice and the accountant's letter, one copy of which must be signed by the sole proprietor, a general partner, or a duly authorized corporate, limited liability company, or limited liability partnership officer or member, as appropriate, and by the independent public accountant, respectively.

* * * * *

(i) * * *

(1) * * *

(ii) Be signed;

* * * * *

(k) *Supplemental reports.* (1) Each broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e shall file concurrently with the annual reports a supplemental report on management controls, which must be prepared by a registered public accounting firm (as that term is defined in section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 *et seq.*)). The supplemental report must indicate the results of the accountant's review of the internal risk management control system established and documented by the broker or dealer in accordance with § 240.15c3–4. This review shall be conducted in accordance with procedures agreed upon by the broker or dealer and the registered public accounting firm conducting the review. The agreed upon procedures are to be performed and the report is to be prepared in accordance with the rules promulgated by the Public Company Accounting Oversight Board. The purpose of the review is to confirm that the broker or dealer has established, documented, and is in compliance with the internal risk management controls established in accordance with § 240.15c3–4. Before commencement of the review and no later than December 10 of each year, the broker or dealer must file a statement with the Commission that includes:

(i) A description of the agreed-upon procedures agreed to by the broker or dealer and the registered public accounting firm; and

(ii) A notice describing changes in those agreed-upon procedures, if any. If there are no changes, the broker or dealer should so indicate.

(2) The supplemental report and statement to be filed under paragraph (k)(1) of this section must be filed with the Commission electronically on EDGAR in the manner described by the EDGAR Filer Manual, as defined in 17 CFR 232.11 (Rule 11 of Regulation S–T), and must be filed in accordance with the requirements of 17 CFR part 232 (Regulation S–T). The supplemental report and statement must be provided as an Interactive Data File in accordance with 17 CFR 232.405 (Rule 405 of Regulation S–T).

* * * * *

(p) *Signatures.* Any signature required by this section may be a manual or electronic signature. The signing process for an electronic signature must, at a minimum:

(1) Require the signatory to present a physical, logical, or digital credential that authenticates the signatory's individual identity;

(2) Reasonably provide for non-repudiation of the signature;

(3) Provide that the signature be attached, affixed, or otherwise logically associated with the signature page or document being signed; and

(4) Include a timestamp to record the date and time of the signature.

■ 20. Amend § 240.17a–12 by:

■ a. Revising paragraphs (a)(2), (b)(6);

■ b. Revising and republishing paragraph (c);

■ c. Revising paragraphs (g)(2), (j)(1), (k), (l)(1), (m)(1), and (p); and

■ d. Adding paragraph (q).

The revisions and addition read as follows:

§ 240.17a–12 Reports to be made by certain OTC derivatives dealers.

(a) * * *

(2) The reports provided for in this paragraph (a) must be filed with the Commission electronically on the SEC eFOCUS system. All reports filed pursuant to paragraph (a) of this section shall be deemed to be confidential for the purposes of section 24(b) of the Act.

* * * * *

(b) * * *

(6) The annual audit report shall be filed with the Commission electronically on EDGAR in the manner described by the EDGAR Filer Manual, as defined in 17 CFR 232.11 (Rule 11 of Regulation S–T), and must be filed in accordance with the requirements of 17 CFR part 232 (Regulation S–T). The annual audit report must be provided as an Interactive Data File in accordance with 17 CFR 232.405 (Rule 405 of Regulation S–T).

(c) *Nature and form of reports.* The financial statements filed pursuant to paragraph (b) of this section shall be prepared and filed in accordance with the following requirements:

(1) An audit shall be conducted by a certified public accountant who shall be in fact independent as defined in paragraph (f) of this section, and it shall give an opinion covering the statements filed pursuant to paragraph (b) of this section.

(2) Attached to the report shall be an oath or affirmation that, to the best knowledge and belief of the person making such oath or affirmation, the financial statements and schedules are true and correct and neither the OTC derivatives dealer, nor any partner, officer, or director, as the case may be, has any significant interest in any counterparty or in any account classified solely as that of a counterparty. The oath or affirmation shall be made before a person duly authorized to administer such oaths or affirmations. If the OTC derivatives dealer is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if a partnership, by a general partner; or if a corporation, by a duly authorized officer.

(3) The OTC derivatives dealer must keep the original oath or affirmation for a period of not less than six years, the first two years in an easily accessible place and in accordance with the requirements of § 240.17a–4 (Rule 17a–4 under the Exchange Act).

(4) An OTC derivatives dealer may request confidential treatment for all of the statements filed pursuant to paragraph (b) of this section and such statements will be deemed confidential for the purposes of section 24(b) of the Act. However, such statements shall be available for use by any official or employee of the United States or by any other person if the Commission authorizes disclosure of such information to that person.

* * * * *

(g) * * *

(2) Such notice shall state the date of notification of the termination of the engagement of the former certified public accountant or the engagement of the new certified public accountant, as applicable, and the details of any disagreements existing during the 24 months (or the period of the engagement, if less) preceding such termination or new engagement relating to any matter of accounting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission, which disagreements, if not resolved to the satisfaction of the former certified public accountant, would have caused the former certified public accountant to make reference to them in connection with the report on the subject matter of the disagreements. The disagreements required to be

reported in response to the preceding sentence include both those resolved to the former certified public accountant's satisfaction and those not resolved to the former certified public accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level (*i.e.,* between principal financial officers of the OTC derivatives dealer and personnel of the certified public accounting firm responsible for rendering its report). The notice shall also state whether the certified public accountant's report on the financial statements for any of the past two years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainties, audit scope, or accounting principles, and describe the nature of each such adverse opinion, disclaimer of opinion, or qualification. The OTC derivatives dealer shall also request the former certified public accountant to furnish the OTC derivatives dealer with a letter addressed to the Commission stating whether the former certified public accountant agrees with the statements contained in the notice of the OTC derivatives dealer and, if not, stating the respects in which the former certified public accountant does not agree. The OTC derivatives dealer shall file three copies of the notice and the accountant's letter, one copy of which shall be signed by the sole proprietor, a general partner, or a duly authorized corporate, limited liability company, or limited liability partnership officer or member, as appropriate, and by the independent public accountant, respectively.

* * * * *

(j) * * *

(1) *Technical requirements.* The certified public accountant's report shall be dated; be signed; indicate the city and State where issued; and identify without detailed enumeration the financial statements and schedules covered by the report.

* * * * *

(k) *Accountant's report on material inadequacies and reportable conditions.* The OTC derivatives dealer shall file concurrently with the annual audit report a supplemental report by the certified public accountant describing any material inadequacies or any matter that would be deemed to be a reportable condition under U.S. Generally Accepted Auditing Standards that are unresolved as of the date of the certified public accountant's report. The report shall also describe any material inadequacies found to have existed since the date of the previous audit. The supplemental report shall indicate any corrective action taken or proposed by the OTC derivatives dealer with regard to any identified material inadequacies or reportable conditions. If the audit did not disclose any material inadequacies or reportable conditions, the supplemental report shall so state. This supplemental report shall be filed with the Commission electronically on EDGAR in the manner described by the EDGAR Filer Manual, as defined in 17 CFR 232.11 (Rule 11 of Regulation S–T), and must be filed in accordance with the requirements of 17 CFR part 232 (Regulation S–T). This supplemental report must be provided as an Interactive Data File in accordance with 17 CFR 232.405 (Rule 405 of Regulation S–T).

(l) * * *

(1) The OTC derivatives dealer shall file concurrently with the annual audit report a supplemental report by the certified public accountant indicating the results of the certified public accountant's review of the OTC derivatives dealer's internal risk management control system with respect to the requirements of § 240.15c3–4. This review shall be conducted in accordance with procedures agreed to by the OTC derivatives dealer and the certified public accountant conducting the review. The purpose of the review is to confirm that the OTC derivatives dealer has established, documented, and maintained an internal risk management control system in accordance with § 240.15c3–4, and is in compliance with that internal risk management control system. This supplemental report shall be filed with the Commission electronically on EDGAR in the manner described by the EDGAR Filer Manual, as defined in 17 CFR 232.11 (Rule 11 of Regulation S–T) and must be filed in accordance with the requirements of 17 CFR part 232 (Regulation S–T). This supplemental report must be provided as an Interactive Data File in accordance with 17 CFR 232.405 (Rule 405 of Regulation S–T).

* * * * *

(m) * * *

(1) The OTC derivatives dealer shall file concurrently with the annual audit report a supplemental report by the certified public accountant indicating the results of the certified public accountant's review of the broker's or dealer's inventory pricing and modeling procedures. This review shall be conducted in accordance with procedures agreed to by the OTC derivatives dealer and by the certified public accountant conducting the review. The purpose of the review is to confirm that the pricing and modeling procedures relied upon by the OTC derivatives dealer conform to the procedures submitted to the Commission as part of its OTC derivatives dealer application, and that the procedures comply with the qualitative and quantitative standards set forth in § 240.15c3–1f. This supplemental report shall be filed with the Commission electronically on EDGAR in the manner described by the EDGAR Filer Manual, as defined in 17 CFR 232.11 (Rule 11 of Regulation S–T), and must be filed in accordance with the requirements of 17 CFR part 232 (Regulation S–T). This supplemental report must be provided as an Interactive Data File in accordance with 17 CFR 232.405 (Rule 405 of Regulation S–T).

* * * * *

(p) Unless otherwise stated in this rule, for purposes of filing requirements as described in § 240.17a–12, these filings shall be deemed to have been accomplished upon receipt at the Commission's principal office in Washington, DC.

(q) Any signature required by this section may be a manual or electronic signature. The signing process for an electronic signature must, at a minimum:

(1) Require the signatory to present a physical, logical, or digital credential that authenticates the signatory's individual identity;

(2) Reasonably provide for non-repudiation of the signature;

(3) Provide that the signature be attached, affixed, or otherwise logically associated with the signature page or document being signed; and

(4) Include a timestamp to record the date and time of the signature.

■ 21. Revise § 240.17a–19 to read as follows:

§ 240.17a–19 Form X–17A–19 Report by national securities exchanges and registered national securities associations of changes in the membership status of any of their members.

Every national securities exchange and every registered national securities association must file with the Commission and with the Securities Investor Protection Corporation such information as is required by § 249.635 of this chapter on Form X–17A–19 within five business days of the occurrence of the initiation of the membership of any person or the suspension or termination of the membership of any member. Form X–17A–19 must be filed with the Commission electronically on EDGAR

in accordance with the EDGAR Filer Manual, as defined in 17 CFR 232.11 (Rule 11 of Regulation S–T), and must be filed in accordance with the requirements of Regulation S–T. Nothing in this section shall be deemed to relieve a national securities exchange or a registered national securities association of its responsibilities under § 240.17a–5(b)(5) except that, to the extent a national securities exchange or a registered national securities association promptly files a report on Form X–17A–19 including therewith, inter alia, information sufficient to satisfy the requirements of § 240.17a–5(b)(5), it shall not be required to file a report pursuant to § 240.17a–5(b). Upon the occurrence of the events described in this paragraph, every national securities exchange and every registered national securities association shall notify in writing such member of its responsibilities under § 240.17a–5(b).

■ 22. Revise § 240.17a–22 to read as follows:

§ 240.17a–22 Supplemental material of registered clearing agencies.

Within two business days after issuing, or making generally available, to its participants or to other entities with whom it has a significant relationship, any material (including, for example, manuals, notices, circulars, bulletins, lists or periodicals) that are not otherwise required to be posted on its internet website pursuant to any requirement under Section 19(b) of the Exchange Act or any rule under § 240.19b–4, a registered clearing agency shall prominently post such material on its internet website.

■ 23. Amend § 240.17h–2T by revising paragraph (a) to read as follows:

§ 240.17h–2T Risk assessment reporting requirements for brokers and dealers.

(a) *Reporting requirements of risk assessment information required to be maintained by section 240.17h–1T.* (1) Every broker or dealer registered with the Commission pursuant to section 15 of the Act, and every municipal securities dealer registered pursuant to section 15B of the Act for which the Commission is the appropriate regulatory agency, unless exempt pursuant to paragraph (b) of this section, shall file a Form 17–H within 60 calendar days after the end of each fiscal quarter. The Form 17–H for the fourth fiscal quarter shall be filed within 60 calendar days of the end of the fiscal year. The cumulative year-end financial statements required by section 240.17h–1T may be filed separately within 105 calendar days of the end of the fiscal year.

(2) The reports required to be filed pursuant to paragraph (a)(1) of this section must be filed with the Commission electronically on EDGAR in accordance with the EDGAR Filer Manual, as defined in 17 CFR 232.11 (Rule 11 of Regulation S–T), and must be filed in accordance with the requirements of 17 CFR part 232 (Regulation S–T). The filings must be provided as Interactive Data Files in accordance with 17 CFR 232.405 (Rule 405 of Regulation S–T).

(3) For purposes of this section, the term Material Associated Person shall have the meaning used in § 240.17h–1T.

* * * * *

■ 24. Redesignate § 240.17Ab2–1 as § 240.17ab2–1 and revise newly redesignated § 240.17ab2–1 to read as follows:

§ 240.17ab2–1 Registration of clearing agencies.

(a) An application for registration or for exemption from registration as a clearing agency, as defined in section 3(a)(23) of the Act, or an amendment to any such application shall be filed electronically with the Commission on Form CA–1, in accordance with the instructions thereto and paragraph (g) below.

(b) Any applicant for registration or for exemption from registration as a clearing agency whose application is filed with the Commission on or before November 24, 1975, on and in accordance with the instructions to Form CA–1, with respect to the clearing agency activities described in the application shall, during the period from December 1, 1975, until the Commission grants registration, denies registration or grants an exemption from registration, be exempt from the registration provisions of section 17A(b) of the Act and the rules and regulations thereunder and, unless the Commission shall otherwise provide by rule or by order, the provisions of the Act and the rules and regulations thereunder which would be applicable to clearing agencies as a result of registration under the Act.

(c)(1) The Commission, upon the request of a clearing agency, may grant registration of the clearing agency in accordance with sections 17A(b) and 19(a)(1) of the Act but exempt the registrant from one or more of the requirements as to which the Commission is directed to make a determination pursuant to paragraphs (A) through (I) of section 17A(b)(3) of the Act, provided that any such registration shall be effective only for eighteen months from the date the registration is made effective (or such longer period as the Commission may provide by order).

(2) In the case of any clearing agency registered in accordance with paragraph (c)(1) of this section, not later than nine months from the date such registration is made effective the Commission either will grant registration in accordance with sections 17A(b) and 19(a)(1) of the Act, without exempting the registrant from one or more of the requirements as to which the Commission is directed to make a determination pursuant to subparagraphs (A) through (I) of section 17A(b)(3) of the Act, or will institute proceedings in accordance with section 19(a)(1)(B) of the Act to determine whether registration should be denied at the expiration of the registration granted in accordance with paragraph (c)(1) of this section.

(d) The electronic filing of an amendment to an application for registration or for exemption from registration as a clearing agency, which registration or exemption has not been granted, or the electronic filing of additional information or documents prior to the granting of registration or an exemption from registration shall extend to ninety days from the date such electronic filing is made (or to such longer period as to which the applicant consents) the period within which the Commission shall grant registration, institute proceedings to determine whether such registration shall be denied, or conditionally or unconditionally exempt registrant from the registration and other provisions of section 17A of the Act or the rules or regulations thereunder.

(e) If any information reported at Items 1–3 of Form CA–1 is or becomes inaccurate, misleading or incomplete for any reason, whether before or after registration or an exemption from registration has been granted, the registrant shall electronically file promptly an amendment on Form CA–1 correcting the inaccurate, misleading or incomplete information.

(f) Every application for registration or for exemption from registration as a clearing agency or amendment to, or additional information or document electronically filed in connection with, any such application shall constitute a ''report'' or ''application'' within the meaning of sections 17, 17A, 19, and 32(a) of the Act.

(g)(1) Filings on Form CA–1 made pursuant to this section shall be made electronically and shall contain an electronic signature.

(2) For the purposes of this section, the term *electronic signature* means an electronic entry in the form of a magnetic impulse or other form of

computer data compilation of any letter or series of letters or characters composed of a name, executed, adopted or authorized as a signature.

(3) If the conditions of this section and Form CA–1 are otherwise satisfied, all filings submitted electronically on or before 5:30 p.m. eastern standard time or eastern daylight saving time, whichever is currently in effect, on a business day, shall be deemed filed on that business day, and all filings submitted after 5:30 p.m. eastern standard time or eastern daylight saving time, whichever is currently in effect, shall be deemed filed on the next business day. A filing would be deemed timely filed if it is required to be filed on a day that is not a business day and it is filed on the next available business day.

(4) For purposes of this section, the term *business day* means any day other than a Saturday, Sunday, Federal holiday, a day that the Office of Personnel Management has announced that Federal agencies in the Washington, DC, area, are closed to the public, a day on which the Commission is subject to a Federal Government shutdown, or a day on which the Commission's Washington, DC, office is otherwise not open for regular business.

■ 25. Amend § 240.18a–7 by revising paragraphs (c)(6), (d), (e)(3)(v)(B), (h)(1)(ii), and (j) to read as follows:

§ 240.18a–7 Reports to be made by certain security-based swap dealers and major security-based swap participants.

* * * * *

(c) * * *

(6) *Filing with the Commission.* The annual reports must be filed with the Commission electronically on EDGAR in accordance with the EDGAR Filer Manual, as defined in 17 CFR 232.11 (Rule 11 of Regulation S–T), and must be filed in accordance with the requirements of 17 CFR part 232 (Regulation S–T). The annual reports must be provided as an Interactive Data File in accordance with 17 CFR 232.405 (Rule 405 of Regulation S–T).

(d) *Nature and form of reports.* The annual reports filed pursuant to paragraph (c) of this section must be prepared and filed in accordance with the following requirements:

(1)(i) *Oath or affirmation.* The security-based swap dealer or major security-based swap participant must attach to the annual reports an oath or affirmation that, to the best knowledge and belief of the person making the oath or affirmation:

(A) The financial report is true and correct; and

(B) Neither the registrant, nor any partner, officer, director, or equivalent person, as the case may be, has any proprietary interest in any account classified solely as that of a customer.

(ii) The oath or affirmation must be made before a person duly authorized to administer such oaths or affirmations. If the security-based swap dealer or major security-based swap participant is a sole proprietorship, the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; if a corporation, by a duly authorized officer; or if a limited liability company or limited liability partnership, by the chief executive officer, chief financial officer, manager, managing member, or those members vested with management authority for the limited liability company or limited liability partnership.

(iii) The security-based swap dealer or major security-based swap participant must keep the original oath or affirmation for a period of not less than six years, the first two years in an easily accessible place in accordance with the requirements of § 240.18a-6 of this chapter (Rule 18a-6 under the Exchange Act).

(2) *Confidentiality.* The annual reports filed under paragraph (c) of this section may be filed as:

(i) One public document; or

(ii) Two documents:

(A) A document consisting of the Statement of Financial Condition, the notes to the Statement of Financial Condition, and the report of the independent public accountant covering the Statement of Financial Condition, which is not confidential; and

(B) A document containing the balance of the annual reports for which confidential treatment may be requested and which will be deemed confidential for the purposes of section 24(b) of the Act. However, the annual reports, including the confidential portions, will be available for official use by any official or employee of the U.S. or any State, and by any other person if the Commission authorizes disclosure of the annual reports to that person. Nothing contained in paragraph (d)(2) of this section may be construed to be in derogation of the rights of customers of a security-based-swap dealer or major security-based swap participant, upon request to the security-based swap dealer or major security-based swap participant, to obtain information relative to its financial condition.

(e) * * *

(3) * * *

(v) * * *

(B) The details of any issues arising during the 24 months (or the period of the engagement, if less than 24 months) preceding the termination or new engagement relating to any matter of accounting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission, which issues, if not resolved to the satisfaction of the former independent public accountant, would have caused the independent public accountant to make reference to them in the report of the independent public accountant. The issues required to be reported include both those resolved to the former independent public accountant's satisfaction and those not resolved to the former accountant's satisfaction. Issues contemplated by this section are those which occur at the decision-making level—that is, between principal financial officers of the security-based swap dealer or major security-based swap participant and personnel of the accounting firm responsible for rendering its report. The notice must also state whether the accountant's report filed under paragraph (c)(1)(i)(C) of this section for any of the past two fiscal years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainties, audit scope, or accounting principles, and must describe the nature of each such adverse opinion, disclaimer of opinion, or qualification. The security-based swap dealer or major security-based swap participant must also request the former independent public accountant to furnish the security-based swap dealer or .major security-based swap participant with a letter addressed to the Commission stating whether the independent public accountant agrees with the statements contained in the notice of the security-based swap dealer or major security-based swap participant and, if not, stating the respects in which the independent public accountant does not agree. The security-based swap dealer or major security-based swap participant must file three copies of the notice and the accountant's letter, one copy of which must be signed by the sole proprietor, or a general partner or a duly authorized corporate, limited liability company, or limited liability partnership officer or member, as appropriate, and by the independent public accountant, respectively.

* * * * *

(h) * * *

(1) * * *

(ii) Be signed;

* * * * *

(j) *Signatures.* Any signature required by this section may be a manual or

electronic signature. The signing process for an electronic signature must, at a minimum:

(1) Require the signatory to present a physical, logical, or digital credential that authenticates the signatory's individual identity;

(2) Reasonably provide for non-repudiation of the signature;

(3) Provide that the signature be attached, affixed, or otherwise logically associated with the signature page or document being signed; and

(4) Include a timestamp to record the date and time of the signature.

■ 26. Amend § 240.19b–4 by revising paragraphs (e)(2)(ii) and (j) to read as follows:

§ 240.19b–4 Filings with respect to proposed rule changes by self-regulatory organizations.

* * * * *

(e) * * *

(2) * * *

(ii) When relying on paragraph (e) of this section, a self-regulatory organization shall post the following information, using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website for all reports required by this section, on its publicly available internet website within five business days after commencement of trading a new derivative securities product:

(A) Type of issuer of new derivative securities product;

(B) Class of new derivative securities product;

(C) Name of underlying instrument;

(D) If the underlying instrument is an index, identify whether it is broad-based or narrow-based;

(E) Ticker symbol(s) of new derivative securities product;

(F) Market(s) upon which securities composing the underlying instrument trade;

(G) Settlement methodology of new derivative securities product; and

(H) Position limits of new derivative securities product (if applicable).

* * * * *

(j) Filings by a self-regulatory organization submitted under 17 CFR 249.819 on Form 19b–4 electronically shall contain an electronic signature. For the purposes of this section, the term *electronic signature* means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters or characters composing a name, executed, adopted or authorized as a signature.

* * * * *

■ 27. Amend § 240.24b–2 by:

■ a. Revising and republishing paragraph (b) introductory text; and

■ b. Adding paragraphs (j) and (k).

The revisions and additions read as follows:

§ 240.24b–2 Nondisclosure of information filed with the Commission and with any exchange.

* * * * *

(b) Except as otherwise provided in paragraphs (g), (h), (i), (j), and (k) of this section, the person shall omit from material filed the portion thereof which it desires to keep undisclosed (hereinafter called the confidential portion). In lieu thereof, it shall indicate at the appropriate place in the material filed that the confidential portion has been so omitted and filed separately with the Commission. The person shall file with the copies of the material filed with the Commission:

* * * * *

(j)(1) A broker or dealer shall not omit the confidential portion from the material filed in electronic format pursuant to §§ 240.17a–5(d), 240.17a–5(k), 240.17a–12, or 240.17h–2T of this chapter. In lieu of the procedures described in paragraph (b) of this section, a broker or dealer shall request confidential treatment electronically for any material filed in electronic format pursuant to pursuant to §§ 240.17a–5(d), 240.17a–5(k), 240.17a–12, or 240.17h–2T, of this chapter.

(2) A security-based swap dealer shall not omit the confidential portion from the material filed in electronic format pursuant to § 240.18a–7(c) of this chapter. In lieu of the procedures described in paragraph (b) of this section, a security–based swap dealer shall request confidential treatment electronically for any material filed in electronic format pursuant to § 240.18a–7(c) of this chapter.

(k) An entity shall not omit the confidential portion from the material filed in electronic format on Form CA–1 pursuant to § 240.17ab2–1, and, in lieu of the procedures described in paragraph (b) of this section, may request confidential treatment of information provided on Form CA–1 by completing Section X of Form CA–1.

PART 249–FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 28. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112–106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112–106, 126 Stat. 313 (2012), Sec. 72001 Pub. L. 114–94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. 116–222, 134 Stat. 1063 (2020), unless otherwise noted.

* * * * *

Section 249.617 is also issued under Pub. L. 111–203, 939, 939A, 124. Stat. 1376 (2010) (15 U.S.C. 78c, 15 U.S.C. 78*o*–7 note).

* * * * *

■ 29. Revise Form 1 (referenced in § 249.1).

Note: Form 1 is attached as Appendix 1 to this document. Form 1 will not appear in the Code of Federal Regulations.

■ 30. Revise Form 1–N (referenced in § 249.10).

Note: Form 1–N is attached as Appendix 2 to this document. Form 1–N will not appear in the Code of Federal Regulations.

■ 31. Amend Form X–17A–5 (referenced in § 249.617) by.

■ a. In Part II:

■ (i) In the Cover Page section of the instructions, adding the following text after ''The cover page must be completed in its entirety. If a line does not apply, the firm should write ''None'' or ''N/A'' on the line, as applicable.'': ''The cover page of the FOCUS Report includes signature lines for the principal executive officer or comparable officer, principal financial officer or comparable officer, and principal operations officer or comparable officer. The firm must obtain manual or electronic signatures from at least the firm's principal executive officer or principal financial officer (or the comparable officer). The signing process for an electronic signature must, at a minimum: (1) Require the signatory to present a physical, logical, or digital credential that authenticates the signatory's individual identity; (2) Reasonably provide for non-repudiation of the signature; (3) Provide that the signature be attached, affixed, or otherwise logically associated with the signature page or document being signed; and (4) Include a timestamp to record the date and time of the signature.'';

■ (ii) Revising the Computation of Minimum Regulatory Capital Requirements section, Line 1 in the Statement of Income (Loss) or Statement of Comprehensive Income, As Applicable section, the Computation for Determination of Customer Reserve Requirements section, the Computation for Determination of PAB Requirements section, and the Computation of CFTC Minimum Capital Requirements section;

■ (iii) Removing the following instruction from the Computation of Minimum Regulatory Capital Requirements (Broker-Dealer) section:

3870 *Ratio requirement—2% of aggregate debit items.* FCMs must report here the *greater* of:

- 2% of aggregate debit items, or
- 8% of funds required to be segregated pursuant to the Commodity Exchange Act.

(iii) In the "Computation of Alternate Net Capital Requirement" section,

adding new line 26 after line 25.A. that reads as follows: "26. Percentage of debt to debt-equity

total computed in accordance with Rule 15c3-1(d)..... %_____

3860a".

■ (iv) In the instructions, adding the following text in the ''Filing Requirements for Part IIA'' section as a second new paragraph after ''Part IIA shall be filed monthly by such of these firms which receive written notice pursuant to Rule 17a–5(a)(2)(iv) that they have exceeded parameters set by the self-regulators.'': ''The cover page of the FOCUS Report includes signature lines for the principal executive officer or managing partner, principal financial officer or partner, and principal operations officer or partner. The firm must obtain manual or electronic signatures from at least the firm's principal executive officer or principal financial officer (or the comparable officer). The signing process for an electronic signature must, at a minimum: (1) Require the signatory to present a physical, logical, or digital credential that authenticates the signatory's individual identity; (2) Reasonably provide for non-repudiation of the signature; (3) Provide that the signature be attached, affixed, or otherwise logically associated with the signature page or document being signed; and (4) Include a timestamp to record the date and time of the signature.''

■ c. In Part IIC:

■ (i) Revising the Balance Sheet, Regulatory Capital, and Income Statement sections; and

■ (ii) Amend the instructions to the Cover Page section of Part IIC of Form X–17A–5 (referenced in § 249.617 of this chapter) by adding the following text after ''The cover page must be completed in its entirety. If a line does not apply, the firm should write ''None'' or ''N/A'' on the line, as applicable.'': ''The cover page of the FOCUS Report includes signature lines for the principal executive officer or comparable officer, principal financial officer or comparable officer, and principal operations officer or comparable officer. The firm must obtain manual or electronic signatures from at least the firm's principal executive officer or principal financial officer (or the comparable officer). The signing process for an electronic signature must, at a minimum: (1) Require the signatory to present a physical, logical, or digital credential that authenticates the signatory's individual identity; (2) Reasonably provide for non-repudiation of the signature; (3) Provide that the signature be attached, affixed, or otherwise logically associated with the signature page or document being signed; and (4) Include a timestamp to record the date and time of the signature.''

■ d. In Part III removing the notary public signature line.

Note: Form X–17A–5 is attached as Appendix 3 to this document. Form X–17A–5 will not appear in the Code of Federal Regulations.

■ 32. Amend Form X–17A–19 (referenced in § 249.635) by:

■ a. Revising lines 1, 4, and 5;

■ b. In General Instructions by:

■ i. Revising instructions 2 and 3;

■ ii. Removing instruction 4;

■ iii. Redesignating instructions 5 through 8 as instructions 4 through 7; and

■ iv. Revising newly redesignated instruction 6.

Note: Form X–17A–19 is attached as Appendix 4 to this document. Form X–17A–19 will not appear in the Code of Federal Regulations.

■ (iv) Replacing the instructions for the Computation of CFTC Minimum Capital Requirements section;

■ b. In Part IIA:

■ (i) On the cover page, removing the words ''Manual signatures of:'' and adding in their place ''Signatures of:'';

■ (ii) In lines 11 and 15 of the ''Computation of Net Capital Requirement'' section, removing the words ''line 19'' and adding in their place ''line 18''.

■ 33. Revise and republish § 249.801 to read as follows:

§ 249.801 Form 15A, for application for registration as a national securities association or affiliated securities association.

This form shall be filed as an application for registration as a national securities association or as an affiliated securities association pursuant to § 240.15aa–1 of this chapter (Rule 15aa–1).

■ 34. Redesignate Form X–15AA–1 (referenced in § 249.801) as Form 15A and revise newly redesignated Form 15A.

Note: Form 15A is attached as Appendix 5 to this document. Form 15A will not appear in the Code of Federal Regulations.

§ 249.802 [Removed and Reserved]

■ 35. Remove and reserve § 249.802.

§ 249.803 [Removed and Reserved]

■ 36. Remove and reserve § 249.803.

■ 37. Amend Form 19b–4 (referenced in § 249.819) by revising General Instructions section F.

Note: Form 19b–4 is attached as Appendix 6 to this document. Form 19b–4 will not appear in the Code of Federal Regulations.

PART 249b—FURTHER FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 38. The general authority citation for part 249b continues to read as follows:

Authority: 15 U.S.C. 78a *et seq.,* unless otherwise noted;

* * * * *

■ 39. Revise Form CA–1 (referenced in § 249b.200).

Note: Form CA–1 is attached as Appendix 7 to this document. Form CA–1 will not appear in the Code of Federal Regulations.

By the Commission.

Dated: December 16, 2024.

Sherry R. Haywood,

Assistant Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Form 1

BILLING CODE 8011–P

United States Securities and Exchange Commission
Washington, DC 20549

Form 1 Application for, and Amendments to Application for, Registration as a National Securities Exchange or Exemption from Registration, and Supplemental Materials and Reports

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise comply with the provisions of law applying to the conduct of the exchange would violate the Federal securities laws and may result in disciplinary, administrative, or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

{Name of entity} is making this filing pursuant to the following Rule: (select one)

- ☐ Rule 6a-1 Application
  - ☐ Initial (select type of application)
    - ☐ National Securities Exchange
    - ☐ Exemption from registration based on limited volume
  - ☐ Rule 6a-1(b),(c) or (d) Amendment to Application – Amendment ####
  - ☐ Consent to Extension of Time
    - Date Extension Expires: mm/dd/yyyy
  - ☐ Withdrawal of Application
- ☐ Rule 6a-2(a) Amendment to Registration
  - ☐ Effective date of action taken: mm/dd/yyyy
- ☐ Rule 6a-2(b) Annual Filing
- ☐ Rule 6a-2(c) Triennial Filing for Year: YYYY
- ☐ Rule 6a-3(a) Supplemental Materials
- ☐ Rule 6a-3(b) Report of securities sold during calendar month

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Section I: – Entity Contact Information

☐ Check Box if there is a change in information previously filed.

1. Primary Street Address (Do not use a P.O. Box)

   Street: _____

   City_____, State_____ Zip Code_____

2. Mailing Address: ☐ Same as above

Street: _____

City_____, State_____ Zip Code_____

3. Business Telephone ( ) ____-_____
4. Facsimile (if any) ( ) ____-_____
5. Fiscal Year End: mm/dd
6. Legal Status (select one)
   - ☐ Sole Proprietorship
   - ☐ Corporation
   - ☐ Partnership
   - ☐ Limited Liability Company
   - ☐ Other (Specify):_____

   If other than a sole proprietor, please provide the following:

   a) Date exchange obtained legal status (e.g. date of incorporation): mm/dd/yyyy

   b) State/Country of formation:

   c) Statute under which exchange was organized: _____

Section II: – Name and address of Counsel for (Entity Name)

Name of Firm:
First Name: Last Name:
Title:
Street: _____

City_____, State_____ Zip Code_____

Email:

Section III – Rule 6a-3(a) (select one)

☐ Provide all supplemental materials required under Rule 6a-3(a)(1) (including notices, circulars, bulletins, lists and periodicals) issued or made generally available to members of, or participants or subscribers to, the exchange. Such material shall be filed with the Commission within 10 days after issuing or making such material available to members, participants or subscribers.

☐ In lieu of filing the supplemental material required under Rule 6a-3(a)(1) the {entity} certifies that such information is available continuously at the internet website indicated below and is free and accessible (without any encumbrances or restrictions) by the general public, and further certifies that the site is controlled by the exchange and the information is accurate as of the date of this filing.

Please enter URL(s): _____

Section IV – Rule 6a-3(b)

Rule 6a-3(b) requires that within 15 days after the end of each calendar month, a national securities exchange or an exchange exempted from such registration based on limited volume, shall file a report concerning the securities sold on such exchange during the calendar month. The report shall set forth:

(1) The number of shares of stock sold and the aggregate dollar amount of such stock sold;
(2) The principal amount of bonds sold and the aggregate dollar amount of such bonds sold; and
(3) The number of rights and warrants sold and the aggregate dollar amount of such rights and warrants sold.

Report of securities sold during calendar month ended mm/dd/yyyy

Section V – Exhibits

Information Required by the Exhibit	Alternative Means of Filing Certain Exhibits in Annual (Exhibits K, M, N) and Triennial (Exhibits A, B, C, J) Filings		
	Rule 6a-2(d)(1) – Available by publication	**Rule 6a-2(d)(2) – Available upon request**	**Rule 6a-2(d)(3) – Available via internet website**
Exhibit A: **A copy of the constitution, articles of incorporation or association with all subsequent amendments, and of existing bylaws or corresponding rules or instruments, whatever the name, of the exchange.**	☐ In lieu of filing {entity} certifies that the information may be obtained below and is accurate as of the publication date: Name of Publication: Name Address Telephone # Price of Publication $___ Date of Publication: mm/dd/yyyy	☐ In lieu of filing {entity} certifies that the information requested under this exhibit is kept up to date and is available to the Commission and the public upon request.	☐ In lieu of filing {entity} certifies that the information requested under this exhibit is continuously available at the internet website below, which is controlled by {entity}, and the information is accurate as of the date of this filing and is free and accessible (without any encumbrances or restrictions) by the general public URL(s):
Exhibit B: **A copy of all written rulings, settled practices having the effect of rules, and interpretations of the**	☐ In lieu of filing {entity} certifies that the information may be obtained below	☐ In lieu of filing {entity} certifies that the information	☐ In lieu of filing {entity} certifies that the information requested under this exhibit is continuously available at the internet website below, which is controlled by

Information Required by the Exhibit	Alternative Means of Filing Certain Exhibits in Annual (Exhibits K, M, N) and Triennial (Exhibits A, B, C, J) Filings		
	Rule 6a-2(d)(1) – Available by publication	**Rule 6a-2(d)(2) – Available upon request**	**Rule 6a-2(d)(3) – Available via internet website**
Governing Board or other committee of the exchange in respect of any provisions of the constitution, bylaws, rules, or trading practices of the exchange which are not included in Exhibit A.	and is accurate as of the publication date: Name of Publication: Name Address Telephone # Price of Publication $___ Date of Publication: mm/dd/yyyy	requested under this exhibit is kept up to date and is available to the Commission and the public upon request.	{entity}, and the information is accurate as of the date of this filing and is free and accessible (without any encumbrances or restrictions) by the general public URL(s):
Exhibit C: **For each subsidiary or affiliate of the exchange, and for any entity with whom the exchange has a contractual or other agreement relating to the operation of an electronic trading system to be used to effect transactions on the exchange ("System"), provide the following information:** 1. **Name and address of organization.** 2. **Form of organization (e.g., association, corporation, partnership, etc.).** 3. **Name of state and statute citation under which organized. Date of incorporation in present form.**	□ In lieu of filing {entity} certifies that the information may be obtained below and is accurate as of the publication date: Name of Publication: Name Address Telephone # Price of Publication $___ Date of Publication: mm/dd/yyyy	□ In lieu of filing {entity} certifies that the information requested under this exhibit is kept up to date and is available to the Commission and the public upon request.	□ In lieu of filing {entity} certifies that the information requested under this exhibit is continuously available at the internet website below, which is controlled by {entity}, and the information is accurate as of the date of this filing and is free and accessible (without any encumbrances or restrictions) by the general public URL(s):

Information Required by the Exhibit	Alternative Means of Filing Certain Exhibits in Annual (Exhibits K, M, N) and Triennial (Exhibits A, B, C, J) Filings		
	Rule 6a-2(d)(1) – Available by publication	Rule 6a-2(d)(2) – Available upon request	Rule 6a-2(d)(3) – Available via internet website
4. **Brief description of nature and extent of affiliation.** 5. **Brief description of business or functions. Description should include responsibilities with respect to operation of the System and/or execution, reporting, clearance, or settlement of transactions in connection with operation of the System.** 6. **A copy of the constitution.** 7. **A copy of the articles of incorporation or association including all amendments.** 8. **A copy of existing bylaws or corresponding rules or instruments.** 9. **The name and title of the present officers, governors, members of all standing committees, or persons performing similar functions.** 10. **An indication of whether such business or organization ceased to be associated with the exchange during the previous year, and a brief statement of the reasons for**			

Information Required by the Exhibit	Alternative Means of Filing Certain Exhibits in Annual (Exhibits K, M, N) and Triennial (Exhibits A, B, C, J) Filings		
	Rule 6a-2(d)(1) – Available by publication	Rule 6a-2(d)(2) – Available upon request	Rule 6a-2(d)(3) – Available via internet website
termination of the association.			
Exhibit D: **For each subsidiary or affiliate of the exchange, provide unconsolidated financial statements for the latest fiscal year. Such financial statements shall consist, at a minimum, of a balance sheet and an income statement with such footnotes and other disclosures as are necessary to avoid rendering the financial statements misleading. If any affiliate or subsidiary is required by another Commission rule to submit annual financial statements, a statement to that effect, with a citation to the other Commission rule, may be provided in lieu of the financial statements required here.**	Not Applicable	Not Applicable	Not Applicable
Exhibit E: **Describe the manner of operation of the System. This description should include the following:** 1. **The means of access to the System.** 2. **Procedures governing the entry and display of**	Not Applicable	Not Applicable	Not Applicable

Information Required by the Exhibit	Alternative Means of Filing Certain Exhibits in Annual (Exhibits K, M, N) and Triennial (Exhibits A, B, C, J) Filings		
	Rule 6a-2(d)(1) – Available by publication	Rule 6a-2(d)(2) – Available upon request	Rule 6a-2(d)(3) – Available via internet website
quotations and orders in the System. 3. Procedures governing the execution, reporting, clearance and settlement of transactions in connection with the System. 4. Proposed fees. 5. Procedures for ensuring compliance with System usage guidelines. 6. The hours of operation of the System, and the date on which exchange intends to commence operation of the System. 7. Attach a copy of the users' manual. 8. If exchange proposes to hold funds or securities on a regular basis, describe the controls that will be implemented to ensure safety of those funds or securities.			
Exhibit F: **A complete set of all forms pertaining to:** 1. Application for membership, participation, or	Not Applicable	Not Applicable	Not Applicable

Information Required by the Exhibit	Alternative Means of Filing Certain Exhibits in Annual (Exhibits K, M, N) and Triennial (Exhibits A, B, C, J) Filings		
	Rule 6a-2(d)(1) – Available by publication	Rule 6a-2(d)(2) – Available upon request	Rule 6a-2(d)(3) – Available via internet website
subscription to the entity. 2. Application for approval as a person associated with a member, participant, or subscriber of the entity. 3. Any other similar materials.			
Exhibit G: **A complete set of all forms of financial statements, reports, or questionnaires required of members, participants, subscribers, or any other users relating to financial responsibility or minimum capital requirements for such members, participants, or any other users. Provide a table of contents listing the forms included in this Exhibit G.**	Not Applicable	Not Applicable	Not Applicable
Exhibit H: **A complete set of documents composing the exchange's listing applications, including any agreements required to be executed in connection with listing and a schedule of listing fees. If the exchange does not list securities,**	Not Applicable	Not Applicable	Not Applicable

Information Required by the Exhibit	Alternative Means of Filing Certain Exhibits in Annual (Exhibits K, M, N) and Triennial (Exhibits A, B, C, J) Filings		
	Rule 6a-2(d)(1) – Available by publication	**Rule 6a-2(d)(2) – Available upon request**	**Rule 6a-2(d)(3) – Available via internet website**
provide a brief description of the criteria used to determine what securities may be traded on the exchange. Provide a table of contents listing the forms included in this Exhibit H.			
Exhibit I: **For the latest fiscal year of the exchange, audited financial statements which are prepared in accordance with, or in the case of a foreign exchange, reconciled with, United States generally accepted accounting principles, and are covered by a report prepared by an independent public accountant. If an exchange has no consolidated subsidiaries, it shall file audited financial statements under Exhibit I alone and need not file a separate unaudited financial statement for the exchange under Exhibit D.**	Not Applicable	Not Applicable	Not Applicable
Exhibit J: **A list of the officers, governors, members of all standing committees, or persons performing similar functions, who**	□ In lieu of filing {entity} certifies that the information may be obtained below	□ In lieu of filing {entity} certifies that the information	□ In lieu of filing {entity} certifies that the information requested under this exhibit is continuously available at the internet website below, which is controlled by

Information Required by the Exhibit	Alternative Means of Filing Certain Exhibits in Annual (Exhibits K, M, N) and Triennial (Exhibits A, B, C, J) Filings		
	Rule 6a-2(d)(1) – Available by publication	**Rule 6a-2(d)(2) – Available upon request**	**Rule 6a-2(d)(3) – Available via internet website**
presently hold or have held their offices or positions during the previous year, indicating the following for each: 1. **Name.** 2. **Title.** 3. **Dates of commencement and termination of term of office or position.** 4. **Type of business in which each is primarily engaged (e.g., floor broker, specialist, odd lot dealer, etc.).**	and is accurate as of the publication date: Name of Publication: Name Address Telephone # Price of Publication $___ Date of Publication: mm/dd/yyyy	requested under this exhibit is kept up to date and is available to the Commission and the public upon request.	{entity}, and the information is accurate as of the date of this filing and is free and accessible (without any encumbrances or restrictions) by the general public URL(s):
Exhibit K: **This Exhibit is applicable only to exchanges that have one or more owners, shareholders, or partners that are not also members of the exchange. If the exchange is a corporation, please provide a list of each shareholder that directly owns 5% or more of a class of a voting security of the exchange. If the exchange is a partnership, please provide a list of all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's**	☐ In lieu of filing {entity} certifies that the information may be obtained below and is accurate as of the publication date: Name of Publication: Name Address Telephone # Price of Publication $___ Date of Publication: mm/dd/yyyy	☐ In lieu of filing {entity} certifies that the information requested under this exhibit is kept up to date and is available to the Commission and the public upon request.	☐ In lieu of filing {entity} certifies that the information requested under this exhibit is continuously available at the internet website below, which is controlled by {entity}, and the information is accurate as of the date of this filing and is free and accessible (without any encumbrances or restrictions) by the general public URL(s):

Information Required by the Exhibit	Alternative Means of Filing Certain Exhibits in Annual (Exhibits K, M, N) and Triennial (Exhibits A, B, C, J) Filings		
	Rule 6a-2(d)(1) – Available by publication	**Rule 6a-2(d)(2) – Available upon request**	**Rule 6a-2(d)(3) – Available via internet website**
capital. For each of the persons listed in the Exhibit K, please provide the following: 1. **Full legal name;** 2. **Title or Status;** 3. **Date title or status was acquired;** 4. **Approximate ownership interest; and** 5. **Whether the person has control, a term that is defined in the instructions to this Form.**			
Exhibit L: **Describe the exchange's criteria for membership in the exchange. Describe conditions under which members may be subject to suspension or termination with regard to the exchange. Describe procedures that will be involved in the suspension or termination of a member.**	Not Applicable	Not Applicable	Not Applicable
Exhibit M: **Provide an alphabetical list of all members, participants, subscribers or other users, including the following information:** 1. **Name;**	□ In lieu of filing {entity} certifies that the information may be obtained below and is accurate as of the	□ In lieu of filing {entity} certifies that the information requested under this	□ In lieu of filing {entity} certifies that the information requested under this exhibit is continuously available at the internet website below, which is controlled by {entity}, and the information is accurate as of the date of

Information Required by the Exhibit	Alternative Means of Filing Certain Exhibits in Annual (Exhibits K, M, N) and Triennial (Exhibits A, B, C, J) Filings		
	Rule 6a-2(d)(1) – Available by publication	**Rule 6a-2(d)(2) – Available upon request**	**Rule 6a-2(d)(3) – Available via internet website**
2. **Date of election to membership or acceptance as a participant, subscriber or other user;** 3. **Principal business address and telephone number;** 4. **If member, participant, subscriber or other user is an individual, the name of the entity with which such individual is associated and the relationship of such individual to the entity (e.g. partner, officer, director, employee, etc.);** 5. **Describe the type of activities primarily engaged in by the member, participant, subscriber, or other user (e.g. floor broker, specialist, odd lot dealer, other market maker, proprietary trader, non-broker dealer, inactive or other functions). A person shall be "primarily engaged" in an activity or function for purposes of this item when that activity or function is the one in which that person is engaged for**	publication date: Name of Publication: Name Address Telephone # Price of Publication $___ Date of Publication: mm/dd/yyyy	exhibit is kept up to date and is available to the Commission and the public upon request.	this filing and is free and accessible (without any encumbrances or restrictions) by the general public URL(s):

Information Required by the Exhibit	Alternative Means of Filing Certain Exhibits in Annual (Exhibits K, M, N) and Triennial (Exhibits A, B, C, J) Filings		
	Rule 6a-2(d)(1) – Available by publication	**Rule 6a-2(d)(2) – Available upon request**	**Rule 6a-2(d)(3) – Available via internet website**
the majority of their time. When more than one type of person at an entity engages in any of the six types of activities or functions enumerated in this item, identify each type (e.g. proprietary, trader, Registered Competitive Trader and Registered Competitive Market Maker) and state the number of members, participants, subscribers, or other users in each; and 6. **The class of membership, participation or subscription or other access.**			
Exhibit N: **Provide a schedule for each of the following:** 1. **The securities listed in the exchange, indicating for each the name of the issuer and a description of the security;** 2. **The securities admitted to unlisted trading privileges, indicating for each the name of the issuer and a**	☐ In lieu of filing {entity} certifies that the information may be obtained below and is accurate as of the publication date: Name of Publication: Name Address Telephone #	☐ In lieu of filing {entity} certifies that the information requested under this exhibit is kept up to date and is available to the Commission and the	☐ In lieu of filing {entity} certifies that the information requested under this exhibit is continuously available at the internet website below, which is controlled by {entity}, and the information is accurate as of the date of this filing and is free and accessible (without any encumbrances or restrictions) by the general public URL(s):

Information Required by the Exhibit	Alternative Means of Filing Certain Exhibits in Annual (Exhibits K, M, N) and Triennial (Exhibits A, B, C, J) Filings		
	Rule 6a-2(d)(1) – Available by publication	**Rule 6a-2(d)(2) – Available upon request**	**Rule 6a-2(d)(3) – Available via internet website**
description of the security; 3. **The unregistered securities admitted to trading on the exchange which are exempt from registration under Section 12(a) of the Act. For each security listed, provide the name of the issuer and a description of the security, and the statutory exemption claimed (e.g. Rule 12a-6); and** 4. **Other securities traded on the exchange, including for each the name of the issuer and a description of the security.**	Price of Publication $___ Date of Publication: mm/dd/yyyy	public upon request.	

BILLING CODE 8011–C

Section VI—Contact Employee Information

Provide the following information of the person at {entity name} prepared to respond to questions for this submission:

First name: Last name:
Title:
Email: Telephone:

Section VII—Consent to Service and Attestation

☐ By checking this box, {Name of Entity} consents that service of any civil action brought by, or notice of any proceeding before, the Securities and Exchange Commission in connection with the exchange's activities may be given to the contact employee by registered or certified mail at the main address, or mailing address if different, given in Section I above; and represents that the information and statements contained herein, including exhibits, schedules, or other documents attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true, and complete.

Form 1 General Instructions

A. Use of the Form

Form 1 is the form used by: (a) an applicant for registration as a national securities exchange under Section 6 of the Securities Exchange Act of 1934 (''Exchange Act'') or for an exemption from registration pursuant to Section 5 of the Exchange Act by reason of the limited volume of transactions effected on such exchange (''applicant'') to provide to the Securities and Exchange Commission (''SEC'' or ''Commission'') specific items of information about the applicant and its operations, or to amend such application, as required under Rule 6a–1; and (b) a national securities exchange (''registered exchange'') or an exchange exempted from such registration by reason of the limited volume of transactions effected on such exchange (''exempt exchange'') uses to provide the information required by Rule 6a–2 and Rule 6a–3.

Filings on Form 1 submitted pursuant to Rule 6a–1, Rule 6a–2 or Rule 6a–3 of the Exchange Act shall be filed in an electronic format on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (EDGAR) in accordance with EDGAR rules set forth in Regulation S–T (17 CFR part 232). All pages of an electronically filed Form 1, including exhibits, shall be numbered consecutively, consistent with Rule 0–3 under the Exchange Act (17 CFR 240.0–3). For assistance with EDGAR issues, please consult the EDGAR—Information for Filers web page on *SEC.gov*.

The disclosure required to be included in the following exhibits to Form 1 must be provided as an Interactive Data File in accordance with Rule 405 of Regulation S–T. This requirement does not extend to copies of existing documents:

(1) Exhibit D;

(2) Exhibit E, except for the copy of the users' manual; and

(3) Exhibit I.

B. Need for Careful Preparation of the Completed Form, Including Exhibits

Applicants and registered and exempt exchanges must provide all the information required by the form, including the exhibits, and must present the information in a clear and comprehensible manner. A filing that is incomplete or similarly deficient may be returned to the applicant or registered or exempt exchange. Any filing so returned shall for all purposes be deemed not to have been filed with the Commission. *See also* Rule 0–3 under the Exchange Act (17 CFR 240.0–3). If any exhibit required is inapplicable, a statement to that effect shall be furnished in lieu of such exhibit.

C. When To Use the Form 1

Form 1 is composed of 6 types of submissions to the Commission pursuant to Rules 6a–1, 6a–2 and 6a–3 under the Exchange Act. In completing Form 1, an applicant or exchange shall select the type of filing and provide all information required by the relevant rules. The types of submissions are:

(1) ''Rule 6a–1 Application'' submissions are applications for registration as a national securities exchange or for exemption from such registration based on limited volume. The applicant must select the type of application during the initial filing. An exchange that is filing Form 1 as an application may not satisfy the requirements to provide certain information by means of an internet website. All materials must be filed with the Commission as part of the Form 1 application. Amendments to applications as required by Rules 6a–1(b), (c) or (d) must be filed as amending the Rule 6a–1 application type, and marked to number the amendments consecutively. An applicant may withdraw a Rule 6a–1 application submission type prior to Commission action to issue any order granting registration, or institute proceedings to determine whether registration should be denied.

(2) ''Rule 6a–2(a) Amendment to Registration'' submissions are for amendments to the Form 1 by registered exchanges and exempt exchanges. The amendments shall set forth the nature and effective date of the action taken and shall provide any new information and correct any information rendered inaccurate within 10 days after any action that is taken renders inaccurate, or that causes to be incomplete, any of the following:

(i) Information in Section I-Entity Contact Information, or any amendments thereto; or

(ii) Information filed as part of Exhibits C, F, G, H, J, K or M, or any amendments thereto.

(3) ''Rule 6a–2(b) Annual Filing'' submission shall be filed on or before June 30 of each year and include the following:

(i) Exhibits D and I as of the end of the latest fiscal year of the exchange; and

(ii) Exhibits K, M, and N, which shall be up to date as of the latest date practicable within three (3) months of the date the amendment is filed.

(4) ''Rule 6a–2(c) Triennial Filing'' submission shall be filed on or before June 30, 2025, and every three years thereafter and shall include complete Exhibits A, B, C and J. The information filed under this submission type shall, at a minimum, be up to date within three (3) months as of the date the amendment is filed.

(5) ''Rule 6a–3(a) Supplemental Material'' submission shall be filed with the Commission within 10 days after issuing or making any materials (including notices, circulars, bulletins, lists and periodicals) issued or made generally available to members of, or participants or subscribers to, the exchange.

(6) ''Rule 6a–3(b) Report of securities sold'' submission type shall be filed within 15 days after the end of each calendar month and shall include a report concerning the securities sold on such exchange during the calendar month. The report shall set forth:

(i) The number of shares of stock sold and the aggregate dollar amount of such stock sold;

(ii) The principal amount of bonds sold and the aggregate dollar amount of such bonds sold; and

(iii) The number of rights and warrants sold and the aggregate dollar amount of such rights and warrants sold.

D. Documents Composing the Completed Form

The completed form filed with the Commission shall consist of Form 1, responses to all applicable items, and any exhibits required in connection with the filing.

E. Contact Information and Filing of Completed Form

Each time an applicant or exchange submits a filing to the Commission on Form 1, the applicant or exchange must provide the contact information required by Section II of Form 1. The contact employee must be authorized to receive all contact information, communications and mailings and must be responsible for disseminating that information within the applicant or exchange's organization.

For assistance with EDGAR issues, please consult the EDGAR—Information for Filers web page on *SEC.gov*.

F. Recordkeeping

A copy of this Form 1 must be retained by the exchange and made available for inspection upon request of the SEC.

G. Paperwork Reduction Act Disclosure

Form 1 requires an applicant seeking to register as a national securities exchange or seeking an exemption from registration as a national securities exchange pursuant to Section 5 of the Exchange Act to provide the SEC with certain information regarding the operation of the exchange. Form 1 also requires national securities exchanges or exchanges exempt from registration based on limited volume to update certain information on a periodic basis and to provide supplemental material as required.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 3(a)(1), 5, 6(a) and 23(a) authorize the Commission to collect information on this Form 1 from exchanges. See 15 U.S.C. 78c(a)(1), 78e, 78f(a) and 78w(a).

Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on the facing page of Form 1 and any suggestions for reducing this burden.

Form 1 is designed to enable the Commission to determine whether an exchange applying for registration is in compliance with the provisions of Sections 6 and 19 of the Exchange Act. Form 1 is also designed to enable the Commission to determine whether a national securities exchange or exchange exempt from registration based on limited volume is operating in compliance with the Exchange Act.

It is estimated that an exchange will spend approximately 901 hours completing the initial application on Form 1 pursuant to Rule 6a–1. It is also estimated that each exchange will spend approximately 26 hours to prepare each periodic amendment to Form 1 pursuant to Rules 6a–2(a) and 6a–2(c), and approximately 40 hours to prepare each annual amendment to Form 1 pursuant to Rule 6a–2(b). It is also estimated that each exchange will spend approximately 0.5 hours to prepare each submission pursuant to Rule 6a–3.

It is mandatory that an exchange seeking to operate as a national securities exchange or as an exchange exempt from registration based on limited volume file Form 1 with the Commission. It is also mandatory that national securities exchanges or exchanges exempt from registration based on limited volume file amendments to Form 1 under Rule 6a–2. It is further mandatory that national securities exchanges or exchanges exempt from registration based on limited volume file supplemental information and monthly reports under Rule 6a–3.

No assurance of confidentiality is given by the Commission with respect to the responses made in Form 1. The public has access to the information contained in Form 1.

This collection of information has been reviewed by the Office of Management and Budget (''OMB'') in accordance with the clearance requirements of 44 U.S.C. 3507. The Commission has determined that the information collection does not constitute a system of record for purposes of the Privacy Act.

H. Explanation of Terms

Affiliate—Any person that, directly or indirectly, controls, is under common control with, or is controlled by, the national securities exchange or exchange exempt from registration based on the limited volume of transactions effected on such exchange, including any employees.

Control—The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of voting securities or has the power to sell or direct the sale of

25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that entity.

Direct Owners—Any person that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of a voting security of the applicant. For purposes of this Form 1, a person beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

Member—Shall have the same meaning as under Exchange Act Section 3(a)(3).

National Securities Exchange—Shall mean any exchange registered pursuant to Section 6 of the Exchange Act.

Person Associated With a Member—Shall have the same meaning as under Section 3(a)(21) of the Exchange Act.

Appendix 2—Form 1–N

BILLING CODE 8011–P

Securities and Exchange Commission
Washington, DC 20549

Form 1-N Form and Amendments for Notice of Registration as a National Securities Exchange for the Sole Purpose of Trading Security Futures Products Pursuant to Section 6(g) of the Exchange Act

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise comply with the provisions of law applying to the conduct of the exchange would violate the Federal securities laws and may result in disciplinary, administrative, or criminal action.
INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

{Name of exchange} is making this filing pursuant to the following Rule: (select one)

- ☐ Rule 6a-4 Initial Notice of Registration
- ☐ Rule 6a-4(b) Amendment to Notice of Registration
- ☐ Rule 6a-4(b)(3) Annual Filing for Year
- ☐ Rule 6a-4(b)(4) Triennial Filing for Year: YYYY
- ☐ Rule 6a-4(c)(1) Supplemental Materials
- ☐ Rule 6a-4(c)(2) Report of securities futures products traded during prior calendar month

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Section I – Security Futures Product Exchange's Contact Information

☐ Check Box if there is a change in information previously filed.

1. Primary Street Address (Do not use a P.O. Box)

Street: _____

City_____, State_____ Zip Code_____

2. Mailing Address: ☐ Same as above

Street: _____

City_____, State_____ Zip Code_____

3. Business Telephone ( ) ____-_____
4. Facsimile (if any) ( ) ___-_____
5. Fiscal Year End: mm/dd
6. Legal Status (select one)
   - ☐ Sole Proprietorship
   - ☐ Corporation
   - ☐ Partnership
   - ☐ Limited Liability Company
   - ☐ Other (Specify):_____

If other than a sole proprietor, please provide the following:

a) Date exchange obtained legal status (e.g. date of Incorporation): mm/dd/yyyy
b) State/Country of formation: {pick list}
c) Statute under which exchange was organized _____

Section II: Name and address of Counsel for {Name of Exchange}

Name of Firm:
First Name: Last Name:
Title:
Street:
City: State Zip Code
Email:

Section III – Rule 6a-4(c)(1) (select one)

- ☐ Provide all supplemental materials required under Rule 6a-4(c) related to the trading of security futures products (including notices, circulars, bulletins, lists and periodicals) issued or made generally available to members of, or participants or subscribers to, the exchange. Such material shall be filed within 10 days after issuing or making such material available to members, participants or subscribers.
- ☐ In lieu of filing the supplemental material required under Rule 6a-4(c)(1)(i) the {entity} certifies that the information requested is available continuously at the internet website indicated below and is free and accessible (without any encumbrances or restrictions) by the general public, and further certifies that the site is controlled by the exchange and the information is accurate as of the date of this filing. Please enter URL(s) below: _____

Section IV – Rule 6a-4(c)

Within 15 days after the end of each calendar month, file a report concerning the security futures products traded on the exchange during the previous calendar month. Such report shall contain:

(1) For each contract of sale for future delivery of a single security, the number of contracts traded on such exchange during the relevant calendar month and the total number of shares underlying such contracts traded; and

(2) For each contract of sale for future delivery of a narrow-based security index, the number of contracts traded on such exchange during the relevant calendar month and the total number of shares represented by the index underlying such contracts traded.

Report of security futures products traded during calendar month ended mm/dd/yyyy

Section V: Exhibits

Information Required by the Exhibit	**Alternative Means of Filing Certain Exhibits in Annual (Exhibits F, H, I) and Triennial (Exhibits A, B, C, E) Filings**		
	Rule 6a-4(b)(5)(i) Available by publication	**Rule 6a-4(b)(5)(ii) Available upon request**	**Rule 6a-4(b)(5)(iii) Available via internet website**
Exhibit A: **As of the latest date practicable within one (1) month of the date Form 1-N is filed, a copy of the constitution, articles of incorporation or association with all subsequent amendments, and existing bylaws or corresponding rules or instruments, whatever the name, of the filing exchange.**	☐ In lieu of filing {entity} certifies that the information may be obtained below and is accurate as of the publication date: Name of Publication: Name Address Telephone # Price of Publication $___ Date of Publication: mm/dd/yyyy	☐ In lieu of filing {entity} certifies that the information requested under this exhibit is kept up to date and is available to the Commission and the public upon request.	☐ In lieu of filing {entity} certifies that the information requested under this exhibit is continuously available at the internet website below, which is controlled by {entity}, and is accurate as of the date of this filing and is free and accessible (without any encumbrances or restrictions) by the general public URL(s):

Information Required by the Exhibit	**Alternative Means of Filing Certain Exhibits in Annual (Exhibits F, H, I) and Triennial (Exhibits A, B, C, E) Filings**		
	Rule 6a-4(b)(5)(i) Available by publication	**Rule 6a-4(b)(5)(ii) Available upon request**	**Rule 6a-4(b)(5)(iii) Available via internet website**
Exhibit B: **As of the latest date practicable within one (1) month of the date Form 1-N is filed, a copy of all written rulings, settled practices having the effect of rules, and interpretations of the Governing Board or other committee of the exchange in respect of any provisions of the constitution, bylaws, rules, or trading practices of the filing exchange which are not included in Exhibit A.**	☐ In lieu of filing {entity} certifies that the information may be obtained below and is accurate as of the publication date: Name of Publication: Name Address Telephone # Price of Publication $___ Date of Publication: mm/dd/yyyy	☐ In lieu of filing {entity} certifies that the information requested under this exhibit is kept up to date and is available to the Commission and the public upon request.	☐ In lieu of filing {entity} certifies that the information requested under this exhibit is available at the internet website below and is accurate as of the date of this filing and is free and accessible (without any encumbrances or restrictions) by the general public URL(s):
Exhibit C: **As of the latest date practicable within one (1) month of the date Form 1-N is filed, for each subsidiary or affiliate of the filing exchange that will be involved in the trading of security futures products, and for any entity with whom the exchange has a contractual or other agreement relating to the operation of an electronic trading system to be used to effect transactions in security futures products on the exchange ("System"), provide the following information:** 1. **Name and address of organization.** 2. **Form of organization (e.g., association, corporation, partnership, etc.).** 3. **Name of state and statute citation under which organized. Date of incorporation in present form.**	☐ In lieu of filing {entity} certifies that the information may be obtained below and is accurate as of the publication date: Name of Publication: Name Address Telephone # Price of Publication $___ Date of Publication: mm/dd/yyyy	☐ In lieu of filing {entity} certifies that the information requested under this exhibit is kept up to date and is available to the Commission and the public upon request.	☐ In lieu of filing {entity} certifies that the information requested under this exhibit is available at the internet website below and is accurate as of the date of this filing and is free and accessible (without any encumbrances or restrictions) by the general public URL(s):

Information Required by the Exhibit	Alternative Means of Filing Certain Exhibits in Annual (Exhibits F, H, I) and Triennial (Exhibits A, B, C, E) Filings		
	Rule 6a-4(b)(5)(i) Available by publication	Rule 6a-4(b)(5)(ii) Available upon request	Rule 6a-4(b)(5)(iii) Available via internet website
4. **Brief description of nature and extent of affiliation.** 5. **Brief description of business or functions. Description should include responsibilities with respect to operation of the System and/or execution, reporting, clearance (including the controls that will be implemented to ensure the safety of held funds or securities), or settlement of transactions in connection with operation of the System.** 6. **A copy of the constitution.** 7. **A copy of the articles of incorporation or association including all amendments.** 8. **A copy of existing bylaws or corresponding rules or instruments.** 9. **The name and title of the present officers, governors, members of all standing committees, or persons performing similar functions.** 10. **An indication of whether such business or organization ceased to be associated with the Security Futures Product Exchange during the previous year, and a brief statement of the reasons for termination of the association.**			
Exhibit D: **Describe the manner of operation of the System involving trading of security futures products. The description should include the following:** 1. **The means of access to the System.**	Not Applicable.	Not Applicable	Not Applicable

Information Required by the Exhibit	**Alternative Means of Filing Certain Exhibits in Annual (Exhibits F, H, I) and Triennial (Exhibits A, B, C, E) Filings**		
	Rule 6a-4(b)(5)(i) Available by publication	**Rule 6a-4(b)(5)(ii) Available upon request**	**Rule 6a-4(b)(5)(iii) Available via internet website**
2. **Procedures governing entry and display of quotations and orders in the System.** 3. **Procedures governing the execution, reporting, clearance, and settlement of transactions in connection with the System.** 4. **Proposed fees.** 5. **Procedures for ensuring compliance with System usage guidelines.** 6. **The hours of operation of the System, and the date of which the exchange intends to commence operation of the System.** 7. **Attach a copy of the users' manual.**			
Exhibit E: **A list of the officers, governors, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, indicating the following for each:** 1. **Name.** 2. **Title.** 3. **Dates of commencement and termination of term of office or position.** 4. **Type of business in which each is primarily engaged.**	□ In lieu of filing {entity} certifies that the information may be obtained below and is accurate as of the publication date: Name of Publication: Name Address Telephone # Price of Publication $___ Date of Publication: mm/dd/yyyy	□ In lieu of filing {entity} certifies that the information requested under this exhibit is kept up to date and is available to the Commission and the public upon request.	□ In lieu of filing {entity} certifies that the information requested under this exhibit is available at the internet website below and is accurate as of the date of this filing and is free and accessible (without any encumbrances or restrictions) by the general public URL(s):
Exhibit F: **This Exhibit is applicable only to filing exchanges that have one or more owners, shareholders, partners that are also not members of the exchange and should be**	□ In lieu of filing {entity} certifies that the information may be obtained below and is	□ In lieu of filing {entity} certifies that the information requested	□ In lieu of filing {entity} certifies that the information requested

Information Required by the Exhibit	Alternative Means of Filing Certain Exhibits in Annual (Exhibits F, H, I) and Triennial (Exhibits A, B, C, E) Filings		
	Rule 6a-4(b)(5)(i) Available by publication	**Rule 6a-4(b)(5)(ii) Available upon request**	**Rule 6a-4(b)(5)(iii) Available via internet website**
current as of the latest date practicable within one month of the date Form 1-N is filed. If the exchange is a corporation, please provide a list of each shareholder that directly owns 5% or more of a class of a voting security of the Security Futures Product Exchange. If the exchange is a partnership, please provide a list of all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital. For each person listed in the Exhibit F, please provide the following: **1. Full legal name.** **2. Title of Status.** **3. Date of title or status acquired.** **4. Approximate ownership interest.** **5. Whether the person has control, a term that is defined in the instructions to this Form.**	accurate as of the publication date: Name of Publication: Name Address Telephone # Price of Publication $___ Date of Publication: mm/dd/yyyy	under this exhibit is kept up to date and is available to the Commission and the public upon request.	under this exhibit is available at the internet website below and is accurate as of the date of this filing and is free and accessible (without any encumbrances or restrictions) by the general public URL(s):
Exhibit G: **To the extent not covered in an exchange's rules submitted under Exhibit A, describe the Security Futures Product Exchange's criteria for membership. Describe conditions under which members may be subject to suspension or termination for infractions relating to the trading of security futures products. Describe any procedures that will be involved in the suspension or termination of a member for such infractions.**			
Exhibit H: **As of the latest date practicable within 1 month of the date Form 1-N is filed, provide an alphabetical list of all members, participants, subscribers, or other users,**	☐ In lieu of filing {entity} certifies that the information may be obtained below and is accurate as of	☐ In lieu of filing {entity} certifies that the information requested under this	☐ In lieu of filing {entity} certifies that the information requested under this

Information Required by the Exhibit	**Alternative Means of Filing Certain Exhibits in Annual (Exhibits F, H, I) and Triennial (Exhibits A, B, C, E) Filings**		
	Rule 6a-4(b)(5)(i) Available by publication	**Rule 6a-4(b)(5)(ii) Available upon request**	**Rule 6a-4(b)(5)(iii) Available via internet website**
including the following information: 1. **Name** 2. **If a member, participant, subscriber, or other user is an individual, the name of the entity with which such individual is associated and the relationship of such individual to the entity (e.g., partner, officer, director, employee, etc.).** 3. **Brief description of the type of activities primarily engaged in by the member, participant, subscriber, or other user. A person shall be "primarily engaged" in an activity or function for purposes of this item when that activity or function is the one in which that person is engaged for the majority of their time. When more than one type of person at an entity engages in activities or functions, identify each type and state the number of members, participants, subscribers, or other users in each.** 4. **The class of membership, participation, subscription, or other access.**	the publication date: Name of Publication: Name Address Telephone # Price of Publication $___ Date of Publication: mm/dd/yyyy	exhibit is kept up to date and is available to the Commission and the public upon request.	exhibit is available at the internet website below and is accurate as of the date of this filing and is free and accessible (without any encumbrances or restrictions) by the general public URL(s):
Exhibit I: **Provide a schedule of the security futures products proposed to be listed by the filing exchange, or for amendments to the Form 1-N the security futures products listed by the exchange, indicating for each the name of the issuer and a description of the security.**	□ In lieu of filing {entity} certifies that the information may be obtained below and is accurate as of the publication date: Name of Publication: Name Address Telephone #	□ In lieu of filing {entity} certifies that the information requested under this exhibit is kept up to date and is available to the Commission and the public upon request.	□ In lieu of filing {entity} certifies that the information requested under this exhibit is available at the internet website below and is accurate as of the date of this filing and

Information Required by the Exhibit	Alternative Means of Filing Certain Exhibits in Annual (Exhibits F, H, I) and Triennial (Exhibits A, B, C, E) Filings		
	Rule 6a-4(b)(5)(i) Available by publication	Rule 6a-4(b)(5)(ii) Available upon request	Rule 6a-4(b)(5)(iii) Available via internet website
	Price of Publication $___ Date of Publication: mm/dd/yyyy		is free and accessible (without any encumbrances or restrictions) by the general public URL(s):

Section VI: Contact Employee Information

The individual listed herein as the Contact Employee for {name of exchange} must be authorized to receive all contact information, communications, and mailings and is responsible for disseminating such information within the Security Futures Product Exchange's organization.

First Name: Last Name:
Title:
Email: Telephone:

Section VII: Consent to Service and Attestation

■ By checking this box, {Name of Entity} consents that service of any civil action brought by, or notice of any proceeding before, the Securities and Exchange Commission in connection with the exchange's activities may be given by registered or certified mail to the contact employee at the main address, or mailing address if different, given in Section I above; and represents that the information and statements contained herein, including exhibits, schedules, or other documents attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true, and complete.

Form 1-N General Instructions:

A. Use of the Form

Form 1-N is the form used for: (a) notice of registration as a national securities exchange for the sole purpose of trading security futures products ("Security Futures Product Exchange") under Section 6(g) of the Securities Exchange Act of 1934 ("Exchange Act") to provide to the Securities and Exchange Commission ("SEC" or "Commission") specific items of information about the Security Futures Product Exchange and its operations; (b) the filing of annual and triennial updates to the information required by Form 1-N following notice of registration; and (c) supplemental material and reports of security futures products traded. Filings on Form 1-N submitted pursuant to Rule 6a-4 of the Exchange Act (17 CFR 240.6a-4) shall be filed in an electronic format on the Commission's Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232). For assistance with EDGAR issues, please consult the EDGAR—Information for Filers web page on SEC.gov. All pages of an electronically filed Form 1-N, including exhibits, shall be numbered consecutively, consistent with Rule 0-3 under the Exchange Act (17 CFR 240.0-3).

B. Need for Careful Preparation of the Completed Form, Including Exhibits

Security Futures Product Exchanges must provide all the information required by the form, including the exhibits, and must present the information in a clear and comprehensible manner. A filing that is incomplete or similarly deficient may be returned to the Security Futures Product Exchange. Any filing so returned shall for all purposes be deemed not to have been filed with the Commission. See also Rule 0-3 under the Exchange Act (17 CFR 240.0-3). If any exhibit required is inapplicable, a statement to that effect shall be furnished in lieu of such exhibit. The first

filing on Form 1-N that a Security Futures Product Exchange submits through EDGAR must contain all items required by Section I.

C. When to Use the Form 1-N

Form 1-N is composed of 6 types of submissions to the Commission pursuant to Rule 6a-4 under the Exchange Act. In completing Form 1-N, a Security Futures Product Exchange shall select the type of filing and provide all information required by the relevant rules. The types of submissions are:

(1) "Rule 6a-4 Initial Notice of Registration" submissions for notice of registration as a Security Futures Product Exchange. An exchange that is filing Form 1-N may not satisfy the requirements to provide certain information by means of an internet website. All materials must be filed with the Commission as part of the Form 1-N notice of registration.

(2) "Rule 6a-4(b) Amendment to Notice of Registration" submissions for amendments to the Form 1-N, which shall set forth the nature and effective date of the action taken and shall provide any new information and correct any information rendered inaccurate within:
   i) 10 days after any action that is taken renders inaccurate, or that causes to be incomplete, any information in Sections I through IV, or any amendments thereto; or
   ii) 30 days after any action is taken that renders inaccurate, or that causes to be incomplete, any information filed as part of Exhibit F to Form 1-N, or any amendments thereto.

(3) "Rule 6a-4(b)(3) Annual Filing" submission, which shall be filed by June 30 of each year and include Exhibits F, H, and I, which shall be current as of the latest date practicable within 3 months of the date the amendment is filed.

(4) "Rule 6a-4(b)(4) Triennial Filing" submission, which shall be filed by June 30, 2025, and by June 30 every three years thereafter, and shall include complete Exhibits A, B, C, and E. The information filed under this submission type shall be current as of the latest practicable date, but shall at a minimum, be up to date within 3 months as of the date the amendment is filed.

(5) "Rule 6a-4(c)(1) Supplemental Material" submission type, for submission of supplemental material within 10 days after issuing or making such material available to members, participants, or subscribers.

(6) "Rule 6a-4(c)(2) Report of security futures products traded" submission type shall be filed within 15 days after the end of each calendar month. Such report shall contain: (i) For each contract of sale for future delivery of a single security, the number of contracts traded on such exchange during the relevant calendar month and the total number of share underlying such contracts traded; and (ii) For each contract of sale for future delivery of a narrow-based security index, the number of contracts traded on such exchange during the relevant calendar month and the total number of shares represented by the index underlying such contracts traded.

D. Documents Composing the Completed Form

The completed form filed with the Commission shall consist of Form 1-N, responses to all applicable items, and any exhibits required in connection with the filing.

E. Contact Information and Filing of Completed Form

Each time a Security Futures Product Exchange submits a filing to the Commission on Form 1-N, the Security Futures Product Exchange must provide the contact information required by Section II of Form 1-N. The contact employee must be authorized to receive all contact information, communications and mailings and must be responsible for disseminating that information within the Security Futures Product Exchange.

For assistance with EDGAR issues, please consult the EDGAR—Information for Filers web page on SEC.gov.

F. Recordkeeping

A copy of this Form 1-N, as well as the forms filed with the SEC, must be retained by the Security Futures Product Exchange and made available for inspection upon request of the SEC.

G. Paperwork Reduction Act Disclosure

Form 1-N requires an exchange seeking to register as a national securities exchange for the sole purpose of trading security futures products, pursuant to Section 6(g) of the Exchange Act, to provide the Commission with certain information regarding its operation. If documents containing information satisfying the Commission's information requirements have been filed with the Commodity Futures Trading Commission, copies of such documents may be filed with the Commission. Form 1-N also requires Security Futures Product Exchanges to update certain information on a periodic basis.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 3(a)(1), 5, 6(a) and 23(a) authorize the Commission to collect information on this Form 1-N from Security Futures Product Exchanges. *See* 15 U.S.C. 78c(a)(1), 78e, 78f(a) and 78w(a).

Form 1-N is designed to enable the Commission to determine whether a Security Futures Product Exchange is in compliance with the Exchange Act.

It is estimated that a Security Futures Product Exchange will spend approximately 29 hours completing the initial application on Form 1-N pursuant to Rule 6a-4. It is estimated that each Security Futures Product Exchange will spend approximately 14 hours annually to prepare periodic amendments, 14 hours annually to prepare annual amendments, 7 hours annually to prepare triennial amendments to Form 1-N and 6 hours annually for the required supplemental information and monthly reports pursuant to Rule 6a-4.

Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

It is mandatory that an exchange seeking to operate as a national securities exchange for the sole purpose of trading security futures products file a Form 1-N with the Commission. It is also mandatory that Security Futures Product Exchanges file amendments to Form 1-N under Rule 6a-4.

No assurance of confidentiality is given by the Commission with respect to the responses made in Form 1-N. The public has access to the information contained in Form 1-N.

This collection of information has been reviewed by the Office of Management and Budget ("OMB") in accordance with the clearance requirements of 44 U.S.C. 3507. The Commission has determined that the information collection does not constitute a system of record for purposes of the Privacy Act.

H. Explanation of Terms

AFFILIATE - Any person that, directly or indirectly, controls, is under common control with, or is controlled by, the national securities exchange or exchange exempt from registration based on the limited volume of transactions effected on such exchange, including any employees.

CONTROL - The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that entity.

DIRECT OWNERS - Any person that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of a voting security of the Security Futures Product Exchange. For purposes of this Form 1-N, a person beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

MEMBER - Shall have the same meaning as under Exchange Act Section 3(a)(3).

PERSON ASSOCIATED WITH A MEMBER - Shall have the same meaning as under Section 3(a)(21) of the Exchange Act.

BILLING CODE 8011–C

Appendix 3—Form X–17A–5

BILLING CODE 8011–P

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FOCUS Report Part II	COMPUTATION OF MINIMUM REGULATORY CAPITAL REQUIREMENTS
	Items on this page to be reported by a: Stand-Alone Broker-Dealer Broker-Dealer SBSD (other than OTC Derivatives Dealer) Broker-Dealer MSBSP

Calculation of Excess Tentative Net Capital (If Applicable)

1. Tentative net capital	$	3640
2. Minimum tentative net capital requirement	$	12055
3. Excess tentative net capital (difference between Lines 1 and 2)	$	12056
4. Tentative net capital in excess of 120% of minimum tentative net capital requirement reported on Line 2	$	12057

Calculation of Minimum Net Capital Requirement

5. Ratio minimum net capital requirement		
A. 6⅔% of total aggregate indebtedness (Line Item 3840)	$	3756
B. 2% of aggregate debit items as shown in the Formula for Reserve Requirements pursuant to Rule 15c3-3	$	3870
C. Percentage of risk margin amount computed under 17 CFR 240.15c3-1(a)(7)(i) or (a)(10), if applicable	$	12058
D. Minimum ratio net capital requirement ([Line 5A or 5B, as appliable] plus Line 5C)	$	12060
6. Fixed-dollar minimum net capital requirement	$	3880
7. For broker-dealers engaged in reverse repurchase agreements, 10% of the amounts in 17 CFR 240.15c3-1(a)(9)(i)-(iii)	$	12059
8. Minimum net capital requirement (Line 7 plus greater of Line 5D and Line 6)	$	3760
9. Excess net capital (Item 3750 minus Item 3760)	$	3910
10. Net capital and tentative net capital in relation to early warning thresholds		
A. Net capital in excess of 120% of minimum net capital requirement reported on Line 8	$	12061
B. Net capital in excess of 5% of combined aggregate debit items as shown in the Formula for Reserve Requirements pursuant to Rule 15c3-3	$	3920

Computation of Aggregate Indebtedness (If Applicable)

11. Total aggregate indebtedness liabilities from Statement of Financial Condition (Item 1230)	$	3790
12. Add:		
A. Drafts for immediate credit	$	3800
B. Market value of securities borrowed for which no equivalent value is paid or credited	$	3810
C. Other unrecorded amounts (list)	$	3820
D. Total additions (sum of Line Items 3800, 3810, and 3820)	$	3830
13. Deduct: Adjustment based on deposits in Special Reserve Bank Accounts (see Rule 15c3-1(c)(1)(vii))	$	3838
14. Total aggregate indebtedness (sum of Line Items 3790 and 3830)	$	3840
15. Percentage of aggregate indebtedness to net capital (Item 3840 divided by Item 3750)	%	3850
16. Percentage of aggregate indebtedness to net capital *after* anticipated capital withdrawals (Item 3840 divided by Item 3750 less Item 4880)	%	3853

Calculation of Other Ratios

17. Percentage of net capital to aggregate debits (Item 3750 divided by Item 4470)	%	3851
18. Percentage of net capital, *after* anticipated capital withdrawals, to aggregate debits (Item 3750 less Item 4880, divided by Item 4470)	$	3854
19. Percentage of debt to debt-to-equity total, computed in accordance with Rule 15c3-1(d)	%	3860
20. Options deductions/net capital ratio (1000% test) total deductions exclusive of liquidating equity under Rule 15c3-1(a)(6) and (c)(2)(x) divided by net capital	$	3852

* * * * *

REVENUE

1. Commissions

A. Commissions on transactions in listed equity securities executed on an exchange	$	3935
B. Commissions on transactions in exchange listed equity securities executed over-the-counter	$	3937
C. Commissions on listed option transactions	$	3938
D. All other securities commissions	$	3939
E. Total securities commissions (sum of Lines 1A-1D)	$	12841
F. Commissions on commodity transactions	$	3991
G. All other commissions	$	12842
H. Total commissions (sum of Lines 1E, 1F, and 1G)	$	3940

* * * * *

FOCUS Report Part II

COMPUTATION FOR DETERMINATION OF CUSTOMER RESERVE REQUIREMENTS

Items on this page to be reported by a: Stand-Alone Broker-Dealer; Broker-Dealer SBSD; Broker-Dealer MSBSP

CREDIT BALANCES

1. Free credit balances and other credit balances in customers' security accounts (see Note A)	$	4340	
2. Monies borrowed collateralized by securities carried for the accounts of customers (see Note B)	$	4350	
3. Monies payable against customers' securities loaned (see Note C)	$	4360	
4. Customers' securities failed to receive (see Note D)	$	4370	
5. Credit balances in firm accounts which are attributable to principal sales to customers	$	4380	
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days	$	4390	
7. **Market value of short security count differences over 30 calendar days old	$	4400	
8. **Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days	$	4410	
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days	$	4420	
10. Other (List: _____)	$	4425	
11. TOTAL CREDITS (sum of Lines 1-10)	$	4430	

DEBIT BALANCES

12. **Debit balances in customers' cash and margin accounts, excluding unsecured accounts and accounts doubtful of collection (see Note E)	$	4440	
13. Securities borrowed to effectuate short sales by customers and securities borrowed to make delivery on customers' securities failed to deliver	$	4450	
14. Failed to deliver of customers' securities not older than 30 calendar days	$	4460	
15. Margin required and on deposit with the Options Clearing Corporation for all option contracts written or purchased in customer accounts (see Note F)	$	4465	
16. Margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Exchange Act (15 U.S.C. 78q-1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) related to the following types of positions written, purchased or sold in customer accounts: (1) security futures products and (2) futures contracts (and options thereon) carried in a securities account pursuant to an SRO portfolio margining rule (see Note G)	$	4467	
17. Margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Exchange Act (15 U.S.C. 78q-1) resulting from the following types of transactions in U.S. Treasury securities in customer accounts that have been cleared, settled, and novated by the clearing agency: (1) purchases and sales of U.S. Treasury securities; and (2) U.S. Treasury securities repurchase and reverse repurchase agreements (see Note H)	$	12843	
18. Other (List: _____)	$	4469	

19. **Aggregate debit items (sum of Lines 12-18) ..... $ _____ 4470
20. **Less 3% (for alternative method only – see Rule 15c3-1(a)(1)(ii)) (3% x Line Item 4470) ..... $ _____ 4471
21. **TOTAL DEBITS (Line 19 less Line 20) ..... $ _____ 4472

RESERVE COMPUTATION

22. Excess of total debits over total credits (Line 21 less Line 11) ..... $ _____ 4480
23. Excess of total credits over total debits (Line 11 less Line 21) ..... $ _____ 4490
24. If computation is made monthly as permitted, enter 105% of excess of total credits over total debits ..... $ _____ 4500
25. Amount held on deposit in "Reserve Bank Account(s)," including $ _____ 4505 value of qualified securities, at end of reporting period ..... $ _____ 4510
26. Amount of deposit (or withdrawal) including $ _____ 4515 value of qualified securities ..... $ _____ 4520
27. New amount in Reserve Bank Account(s) after adding deposit or subtracting withdrawal including $ _____ 4525 value of qualified securities ..... $ _____ 4530
28. Date of deposit (MM/DD/YY) ..... $ _____ 4540

FREQUENCY OF COMPUTATION

29. Daily _____ 4332 Weekly _____ 4333 Monthly _____ 4334

**In the event the net capital requirement is computed under the alternative method, this reserve formula must be prepared in accordance with the requirements of paragraph (a)(1)(ii) of Rule 15c3-1.

References to notes in this section refer to the notes to 17 CFR 240.15c3-1a.

* * * * *

FOCUS Report Part II

COMPUTATION FOR DETERMINATION OF PAB REQUIREMENTS

Items on this page to be reported by a: Stand-Alone Broker-Dealer; Broker-Dealer SBSD; Broker-Dealer MSBSP

CREDIT BALANCES

1. Free credit balances and other credit balances in PAB security accounts (see Note A) ..... $ _____ 2110
2. Monies borrowed collateralized by securities carried for the accounts of PAB (see Note B) ..... $ _____ 2120
3. Monies payable against PAB securities loaned (see Note C) ..... $ _____ 2130
4. PAB securities failed to receive (see Note D) ..... $ _____ 2140
5. Credit balances in firm accounts which are attributable to principal sales to PAB ..... $ _____ 2150
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days ..... $ _____ 2152
7. **Market value of short security count differences over 30 calendar days old ..... $ _____ 2154
8. **Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days ..... $ _____ 2156
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days ..... $ _____ 2158
10. Other (List: _____) ..... $ _____ 2160
11. TOTAL PAB CREDITS (sum of Lines 1-10) ..... $ _____ 2170

DEBIT BALANCES

12. Debit balances in PAB cash and margin accounts, excluding unsecured accounts and accounts doubtful of collection (see Note E) ..... $ _____ 2180
13. Securities borrowed to effectuate short sales by PAB and securities borrowed to make delivery on PAB securities failed to deliver ..... $ _____ 2190
14. Failed to deliver of PAB securities not older than 30 calendar days ..... $ _____ 2200
15. Margin required and on deposit with Options Clearing Corporation for all option contracts written or purchased in PAB accounts (see Note F) ..... $ _____ 2210
16. Margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Exchange Act (15 U.S.C. 78q-1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) related to the following types of positions written, purchased or sold in PAB accounts: (1) security futures products and (2) futures contracts (and options thereon) carried in a securities account pursuant to an SRO portfolio margining rule (see Note G) ..... $ _____ 2215
17. Margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Exchange Act (15 U.S.C. 78q-1) resulting from the following types of transactions in U.S. Treasury securities in customer accounts that have been cleared, settled, and novated by the clearing agency: (1) purchases and sales of U.S. Treasury securities; and (2) U.S. Treasury securities repurchase and reverse repurchase agreements (see Note H) ..... $ _____ 12844
18. Other (List: _____) ..... $ _____ 2220

19. TOTAL PAB DEBITS (sum of Lines 12-18) ..... $ _____ 2230

RESERVE COMPUTATION

20. Excess of total PAB debits over total PAB credits (Line 19 less Line 11) ..... $ _____ 2240

21. Excess of total PAB credits over total PAB debits (Line 11 less Line 19) ..... $ _____ 2250

22. Excess debits in customer reserve formula computation ..... $ _____ 2260

23. PAB reserve requirement (Line 21 less Line 22) ..... $ _____ 2270

24. Amount held on deposit in Reserve Bank Account(s) including $ _____ 2275 value of qualified securities, at end of reporting period ..... $ _____ 2280

25. Amount of deposit (or withdrawal) including $ _____ 2285 value of qualified securities ..... $ _____ 2290

26. New amount in Reserve Bank Account(s) after adding deposit or subtracting withdrawal including $ _____ 2295 value of qualified securities ..... $ _____ 2300

27. Date of deposit (MM/DD/YY) ..... _____ 2310

FREQUENCY OF COMPUTATION

28. Daily _____ 2315 Weekly _____ 2320 Monthly _____ 2330

* See notes regarding PAB Reserve Bank Account Computation (Notes 1-10).

** In the event the net capital requirement is computed under the alternative method, this reserve formula must be prepared in accordance with the requirements of paragraph (a)(1)(ii) of Rule 15c3-1.

References to notes in this section refer to the notes to 17 CFR 240.15c3-1a.

* * * * *

FOCUS Report Part II

COMPUTATION OF CFTC MINIMUM CAPITAL REQUIREMENTS

Items on this page to be reported by: Futures Commission Merchant (FCM)
Swap Dealer (SD)
CFTC Introducing Broker

ADJUSTED NET CAPITAL REQUIRED

A. Risk-based capital requirement

i. Amount of customer risk

Maintenance margin ..... $ _____ 7415

ii. Enter 8% of Line A.i ..... $ _____ 7425

iii. Amount of non-customer risk

Maintenance margin ..... $ _____ 7435

iv. Enter 8% of Line A.iii ..... $ _____ 7445

v. Amount of uncleared swap margin ..... $ _____ 7446

vi. Enter 2% of Line A.v ..... $ _____ 7447

vii. Enter the sum of Lines A.ii, A.iv, and A.vi ..... $ _____ 7455

B. Minimum dollar amount requirement ..... $ _____ 7465

C. Other NFA requirement ..... $ _____ 7475

D. Minimum CFTC adjusted net capital requirement

Enter the greatest of Lines A.vii, B, or C ..... $ _____ 7490

E. Minimum net capital requirement (enter greater of Item 3760 or Item 7490, as applicable) ..... $ _____ 12845

F. Excess adjusted net capital (Item 3750 minus Line E) ..... $ _____ 12846

G. CFTC early warning level –

i. If an FCM, or an FCM also registered as an SD, enter the greatest of 110% of Line A.vii, 150% of Line B, or 150% of Line C ..... $ _____ 7495

ii. If an SD not also registered as an FCM, enter the greatest of 120% of Line A.vii, Line B, or Line C ..... $ _____ 12847

H. CFTC Adjusted Net Capital in excess of early warning level (Item 3750 minus Line G.i or Line G.ii, as applicable) ..... $ _____ 12848

* * * * *

FORM X-17A-5 PART II (FOCUS Report) GENERAL INSTRUCTIONS

* * * * *

Computation of CFTC Minimum Capital Requirements

This section must be prepared by broker-dealers, nonbank SBSDs, and nonbank MSBSPs registered with the CFTC as futures commission merchants ("FCMs"), swap dealers, and/or introducing brokers pursuant to section 4f and 4s, as applicable, of the Commodity Exchange Act and that elect to file a FOCUS Report in lieu of required CFTC financial reports. (Broker-dealers that notice register as FCMs with the CFTC for the sole purpose of soliciting order, accepting orders, or executing orders for security futures products on behalf of others are not subject to CFTC financial reporting requirements.)

This section should be prepared in accordance with the CFTC's Form 1-FR and other guidance issued by the CFTC or CFTC staff ("CFTC Instructions").

* * * * *

* * * * *

FOCUS Report Part IIC	BALANCE SHEET (INFORMATION AS REPORTED ON FFIEC FORM 031 – SCHEDULE RC)
	Items on this page to be reported by a: Bank SBSD Bank MSBSP

Assets			Totals	
1. Cash and balances due from depository institutions (from FFIEC Form 031's Schedule RC-A)				
A. Noninterest-bearing balances and currency and coin			$	0081b
B. Interest-bearing balances			$	0071b
2. Securities				
A. Held-to-maturity securities			$	JJ34b
B. Available-for-sale debt securities			$	1773b
C. Equity securities with readily determinable fair values not held for trading			$	JA22b
3. Federal funds sold and securities purchased under agreements to resell				
A. Federal funds sold in domestic offices			$	B987b
B. Securities purchased under agreements to resell			$	B989b
4. Loans and lease financing receivables (from FFIEC Form 031's Schedule RC-C)				
A. Loans and leases held for sale			$	5369b
B. Loans and leases held for investment	$	B528b		
C. LESS: Allowance for loan and lease losses	$	3123b		
D. Loans and leases held for investment, net of allowance (Line 4B minus Line 4C)			$	B529b
5. Trading assets (from FFIEC Form 031's Schedule RC-D)			$	3545b
6. Premises and fixed assets (including capitalized leases)			$	2145b
7. Other real estate owned (from FFIEC Form 031's Schedule RC-M)			$	2150b
8. Investments in unconsolidated subsidiaries and associated companies			$	2130b
9. Direct and indirect investments in real estate ventures			$	3656b
10. Intangible assets (from FFIEC Form 031's Schedule RC-M)			$	2143b
11. Other assets (from FFIEC Form 031's Schedule RC-F)			$	2160b
12. Total assets (sum of Lines 1 through 11)			$	2170b

FOCUS Report Part IIC	BALANCE SHEET (INFORMATION AS REPORTED ON FFIEC FORM 031 – SCHEDULE RC)
	Items on this page to be reported by a: Bank SBSD Bank MSBSP

Liabilities		**Totals**	
13. Deposits			
A. In domestic offices (sum of totals of Columns A and C from FFIEC Form 031's Schedule RC-E, part I)		$ _____	2200b
1. Noninterest-bearing	$ _____ 6631b		
2. Interest-bearing	$ _____ 6636b		
B. In foreign offices, Edge and Agreement subsidiaries, and IBFs (from FFIEC Form 031's Schedule RC-E, part II)		$ _____	2200bb
1. Noninterest-bearing	$ _____ 6631bb		
2. Interest-bearing	$ _____ 6636bb		
14. Federal funds purchased and securities sold under agreements to repurchase			
A. Federal funds purchased in domestic offices		$ _____	B993b
B. Securities sold under agreements to repurchase		$ _____	B995b
15. Trading liabilities (from FFIEC Form 031's Schedule RC-D)		$ _____	3548b
16. Other borrowed money (includes mortgage indebtedness) (from FFIEC Form 031's Schedule RC-M)		$ _____	3190b
17. Not applicable			
18. Not applicable			
19. Subordinated notes and debentures		$ _____	3200b
20. Other liabilities (from FFIEC Form 031's Schedule RC-G)		$ _____	2930b
21. Total liabilities (sum of Lines 13 through 20)		$ _____	2948b
22. Not applicable			
Equity Capital			
23. Perpetual preferred stock and related surplus		$ _____	3838b
24. Common stock		$ _____	3230b
25. Surplus (exclude all surplus related to preferred stock)		$ _____	3839b
26 A. Retained earnings		$ _____	3632b
B. Accumulated other comprehensive income		$ _____	B530b
C. Other equity capital components		$ _____	A130b
27A. Total bank equity capital (sum of Lines 23 through 26.C)		$ _____	3210b
B. Non-controlling (minority) interests in consolidated subsidiaries		$ _____	3000b
28. Total equity capital (sum of Lines 27A and 27B)		$ _____	G105b
29. Total liabilities and equity capital (sum of Lines 21 and 28)		$ _____	3300b

FOCUS Report Part IIC

REGULATORY CAPITAL (INFORMATION AS REPORTED ON FFIEC FORM 031 – SCHEDULE RC-R)

Items on this page to be reported by a: Bank SBSD
Bank MSBSP

Capital	**Totals**	
1. Total bank equity capital (from FFIEC Form 031's Schedule RC, Line 27A)	$	3210b
2. Tier 1 capital	$	8274b
3. Tier 2 capital	$	5311b
4. Total capital	$	3792b
5. Total risk-weighted assets	$	A223b
6. Total assets for the leverage ratio	$	A224b

Capital Ratios (Column A is to be completed by all banks. Column B is to be completed by advanced approach institutions that exit parallel run only.)	**Column A**	**Column B**
7. Leverage ratio	% 7204b	
8. Common equity tier 1 capital ratio	% P793b	% P793bb
9. Tier 1 capital ratio	% 7206b	% 7206bb
10. Total capital ratio	% 7205b	% 7205bb

FOCUS Report Part IIC

INCOME STATEMENT (INFORMATION AS REPORTED ON FFIEC FORM 031 – SCHEDULE RI)

Items on this page to be reported by a: Bank SBSD
Bank MSBSP

	Totals	
1. Total interest income	$	4107b
2. Total interest expense	$	4073b
3. Total noninterest income	$	4079b
4. Total noninterest expense	$	4093b
5. Realized gains (losses) on held-to-maturity securities	$	3521b
6. Realized gains (losses) on available-for-sale debt securities	$	3196b
7. Income (loss) before applicable income taxes and discontinued operations	$	4301b
8. Net income (loss) attributable to bank	$	4340b
9. Trading revenue (from cash instruments and derivative instruments)		
A. Interest rate exposures	$	8757b
B. Foreign exchange exposures	$	8758b
C. Equity security and index exposures	$	8759b
D. Commodity and other exposures	$	8760b
E. Credit exposures	$	F186b
Lines 9F and 9G are to be completed by banks with $100 billion or more in total assets that are required to complete lines 9A through 9E above.		
F. Impact on trading revenue of changes in the creditworthiness of the bank's derivative counterparties on the bank's derivative assets (year-to-date changes)		
i. Gross credit valuation adjustment (CVA)	$	FT36b
ii. CVA hedge	$	FT37b
G. Impact on trading revenue of changes in the creditworthiness of the bank on the bank's derivative liabilities (year-to-date changes)		
i. Gross debit valuation adjustment (DVA)	$	FT38b
ii. DVA hedge	$	FT39b
10. Net gains (losses) recognized in earnings on credit derivatives that economically hedge credit exposures held outside the trading account		
A. Net gains (losses) on credit derivatives held for trading	$	C889b
B. Net gains (losses) on credit derivatives held for purposes other than trading	$	C890b
11. Credit losses on derivatives	$	A251b

* * * * *

* * * * *

OATH OR AFFIRMATION

I, _____, swear (or affirm) that, to the best of my knowledge and belief, the financial report pertaining to the firm of _____, as of _____, 2___, is true and correct. I further swear (or affirm) that neither the company nor any partner, officer, director, or equivalent person, as the case may be, has any proprietary interest in any account classified solely as that of a customer.

Signature:

_____

Title:

_____

This filing contains (check all applicable boxes):**

* * * * *

BILLING CODE 8011–C

Appendix 4—Form X–17A–19

BILLING CODE 8011–P

FORM X-17A-19

* * * * *

1. Identify the self-regulatory organization filing this report.

☐AMEX ☐BSE ☐CBOE ☐CSE ☐CHX ☐ISE ☐NASD ☐NYSE ☐PCX ☐PHLX ☐ Other:_____

* * * * *

4. The subject is also a member of the:

☐AMEX ☐BSE ☐CBOE ☐CSE ☐CHX ☐ISE ☐NASD ☐NYSE ☐PCX ☐PHLX ☐ Other:_____

5. The examining authority and SIPC collection agent prior to this change in membership status is:

☐AMEX ☐BSE ☐CBOE ☐CSE ☐CHX ☐ISE ☐NASD ☐NYSE ☐PCX ☐PHLX ☐ Other:_____

* * * * *

GENERAL INSTRUCTIONS

* * * * *

2. Original:	File with the Commission electronically on EDGAR in accordance with the EDGAR Filer Manual, as defined in Rule 11 of Regulation S-T (§ 232.11) and in accordance with the requirements of Regulation S-T.
Copy No. 1 - Mail to:	Securities Investor Protection Corporation 1667 K St. N.W., Suite 1000 Washington, DC 20006-1620
Copy No. 2:	Retain for your files.

3. The original filed with the Securities and Exchange Commission and the copy filed with the Securities Investor Protection Corporation shall be signed by a duly authorized official of the national securities exchange or registered securities association (self-regulatory organization).

* * * * *

6. Copies of this Form may be obtained on the Commission's website.

* * * * *

Form 15A-Application for Registration as a National or Affiliated Securities Association and Amendments and Supplements Thereto.

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise comply with the provisions of law applying to the conduct of the association would violate the Federal securities laws and may result in disciplinary, administrative, or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

Note: The granting of registration is not to be deemed permanent approval of the association's rules and practices.

{Entity} is making this filing pursuant to the following Rule: (select one)

Submission type:

- ☐ **Rule 15aa-1** – Application for Registration as a National Securities Association or an Affiliated Securities Association
  - ☐ Initial (select type of application)
    - ☐ A National Securities Association
    - ☐ An Affiliated Securities Association
  - ☐ Amendment to Application – Amendment ######
  - ☐ Consent to Extension of Time
    - ☐ Date Extension Expires: MM/DD/YYYY
  - ☐ Withdrawal of Application

- ☐ **Rule 15aa-2(a)** – Correcting Amendment

- ☐ **Rule 15aa-2(b)** – Current Supplements to Registration

  - ☐ Does information being reported include a change in Exhibit C? Yes/No
    - o If Yes, provide the month in which changes to Exhibit C occurred: mm/yyyy

- ☐ **Rule 15aa-2(c)** – Annual Supplement as of March 1, YYYY

- ☐ **Rule 15aa-2(c)(1)(ii)** – Triennial Supplements for Year: YYYY

- ☐ **Rule 15aa-2(c)(2)** – Annual Financial Supplement as of mm/dd/yyyy

- ☐ **Rule 15aa-2(d)(2)** – Materials

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Section I: Organization

1) Exact name of Association: {Entity}

2) Addresses: ☐ Check if information has changed since previous filing

a) Statutory office:
Street: _____
City_____, State_____ Zip Code_____

b) Principal executive office: ☐ Same as above
Street: _____

City_____, State_____ Zip Code_____

c) Branch or District Offices:

☐ Not Applicable

☐ A list of all branch or district offices, including the street, city, state, zip code, shall be provided and marked as Schedule I.

3) Name and address of each person authorized to receive service of process and notices on behalf of the association from the Commission. Email address of each person authorized to receive notices on behalf of the association from the Commission. If more than one person, provide the information in Schedule II.

Name: _____
Title: _____
Street: _____
City: _____, State: _____ Zip Code: _____
Email: _____

4) Name, address and email address of counsel to the association, if any:

Name: _____
Street: _____
City: _____, State: _____ Zip Code: _____
Email: _____

5) Legal Status

☐ Form of organization of association (select one):

☐ Check if information has not changed since previous filing

☐ Sole Proprietorship

☐ Corporation

☐ Partnership

☐ Limited Liability Company

☐ Other (Specify):_____

☐ Date of organization in present form: mm/dd/yyyy

☐ Name of state and reference to any statute thereof under which organized: {State/Territory} Statute: _____

6) Officers, Directors, Committee members, and other persons.

Provide the following information as Schedule III:

a) A listing of all officers, directors (or persons occupying similar status or performing similar functions), the chairman of the national business conduct committee, and the chairman of each regional business conduct committee. The listing shall include (1) Name (last name, first name, middle name); (2) Title, (3) Name of firm with which such person is associated, (4) Location (city and state) of the particular office of the firm with which such person is connected, and (5) Periods during which the present incumbent has held the same office or position.

b) A listing for each national and regional standing committee. The listing shall include (1) Name of each member, (2) Name of firm with which such member is associated, and (3) Location (city and state) of the particular office of the firm with which such person is connected.

☐ **Rule 15aa-2(c)(1)(i)(A)-(B)** In lieu of filing {entity} certifies that the information in Item 6 may be obtained below and is accurate as of the publication date:

Name of Publication:_____ Name: _____
Address: _____ Telephone #: _____
Price of Publication $_____ Date of Publication: mm/dd/yyyy

Exhibit A – Governing Documents

Provide copies of the association's constitution, charter, or articles of incorporation or association, with all amendments thereto, and of its existing bylaws, and of any rules or instruments corresponding to the foregoing, whatever the name.

- ☐ **Rule 15aa-2(c)(1)(ii)(A):** In lieu of filing {entity} certifies that the information may be obtained below and is accurate as of the publication date:
  Name of Publication:_____ Name: _____
  Address: _____Telephone #: _____
  Price of Publication $_____Date of Publication: mm/dd/yyyy
- ☐ **Rule 15aa-2(c)(1)(ii)(B)**: In lieu of filing {entity} certifies that the information requested under this exhibit is kept up to date and is available to the Commission and the public upon request.

Exhibit B – Financial Statements

A balance sheet of the association as of a date within 30 days of the filing of this application, or promptly after the close of each fiscal year if a supplement, together with an income and expense statement for the year preceding such date or, if the association was organized during such year, for the period from the date of such organization to the date of such balance sheet.

Exhibit C – Members

A list, as of latest practicable date, alphabetically arranged, of all members of the association indicating for each: (1) the name (last name, first name, middle name), (2) the principal place of business, and (3) the date of election to membership for each member elected to membership after December 31, 1994.

- ☐ **Rule 15aa-2(b)(3):** Changes in the information called for in Items (1) and (2) of Exhibit C are reported in a record which is published at least once a month by {entity} and promptly filed with the Commission. No current supplement need be filed with respect thereto.

Exhibit D – Materials

Any notices, reports, circulars, loose-leaf insertions, riders, new additions, lists or other records of changes when, as, and if such records are made available to members of the association.

Section II: Membership ☐ **Check if information has not changed since previous filing**

7) What rule or rules of the association deals with admissions to membership?

8) What rule or rules of the association restricts membership therein

a) On a specified geographical basis?

b) On a specified basis relating to the type of business done by the member?

c) On any basis other than those referred to in (a) or (b) hereof?

9) What rule or rules of the association prescribes the grounds upon which a broker or dealer shall not be admitted to or continued in membership in such association in accordance with Section 15A(b)(4) of the Act?

10) What rule or rules of the association provides that, in any proceeding to determine whether a broker or dealer shall be denied membership, such broker or dealer shall be notified of, and be given an opportunity to be heard upon, the specific grounds for denial which are under consideration, a record shall be kept, and the determination shall set forth the specific grounds upon which the denial is based?

Section III: Representation of Membership ☐ **Check if information has not changed since previous filing**

11) What rule or rules of the association assures a fair representation of its members:

a) In the adoption of any rule of the association or amendment thereto:

b) In the selection of officers and directors of the association

c) In all phases of the administration of the affairs of the association other than those referred to in (a) or (b) hereof

Section IV: Dues and Expenses ☐ **Check if information has not changed since previous filing**

12) What rule or rules of the association provides for the equitable allocation of dues among its members to defray reasonable expenses of administration?

Section V: Business Conduct and Protection of Members ☐ **Check if information has not changed since previous filing**

13) What rule or rules of the association is designed to prevent fraudulent and manipulative acts and practices?

14) What rule or rules of the association is designed to promote just and equitable principles of trade?

15) What rule or rules of the association is designed to provide safeguards against unreasonable profits or unreasonable rates of commissions or other charges?

16) Financial Statements

a) Does the association require financial statements from its members? **Yes/No**
If yes, specify types of members included in and excluded from such requirement

If yes, provide answers to 16(b)–(d) below.

b) How frequently and with what notice does the association require such statements?

c) Must such statements be certified by independent certified or public accountants? **Yes/No**

d) What procedure does the association employ in checking the accuracy of such statements?

17) Give reference to the rules of the association with respect to insolvency of members; limitations on members' maximum indebtedness, or ratio of indebtedness to capital; methods of financing "when, as and if issued" trading; other provisions concerning financial responsibility of members.

18) Give reference to the rules of the association with respect to hypothecation of securities carried for customers' accounts; segregation in safekeeping of customers' free securities; handling of customers' free credit balances; sending of regular monthly statements to customers showing the amount of the customer's free credit balance, if any, and a list of fully paid securities, if any, held in safekeeping; securities sold to customers on an installment plan; lending of securities carried for customers' accounts; manner, method and place of soliciting business including matters pertaining to securities salesmen.

19) Give reference to the rules of the association with respect to keeping and preservation of minimum specified books and records.

20) Give reference to the rules of the association with respect to:

a) Fictitious quotations._____
b) Nominal quotations._____

21) Are any rules of the association substantially identical with any rules promulgated by the Commission? Yes/No. If so, state which:

22) Give reference to the rules of the association with respect to discretionary accounts.

23) What reports or special questionnaires, other than financial statements referred to in Item 16 above, are or may be required of members either periodically or regularly? Also provide information as to how frequently and with what notice such reports are required.

Section VI: Disciplining of Members ☐ **Check if information has not changed since previous filing.**

What rule or rules of the association:

24) Provides that its members shall be appropriately disciplined, by expulsion, suspension, fine, censure, or any other fitting penalty, for any violation of its rules?

25) Prescribes the procedure to be followed in any proceeding to determine whether a member shall be disciplined in accordance with Section 15A(b)(7) of the Act?

Section VII: Affiliated Associations ☐ **Check if information has not changed since previous filing.**

26) What rule or rules of the association, if any, provides for the admission of registered affiliated securities associations?

Section VIII: Miscellaneous ☐ **Check if information has not changed since previous filing.**

27) What rule or rules of the association, if any, specifically regulates the dealings of a member with any nonmember broker or dealer?

28) What rule or rules of the association provides a method for enforcing compliance on the part of its members with the rules of the association?

Section IX: Additional Information for Registration as an Affiliated Securities Association

☐ **Check if information has not changed since previous filing**

29) Respond to this section only if application is made for registration as an affiliated securities association:

a) To which registered national securities association will the applicant forthwith upon registration apply for admission to affiliation?

b) State reasons for believing that such affiliations will be granted.

30) Estimate annual dollar volume of transactions effected by members of the applicant association.

$_____

SECTION X: Contact Information

Provide the following information of the contact employee at {association long name} prepared to respond to questions for this submission:

First Name: _____ Last Name: _____

Title: _____

Email: _____ Telephone: _____

SECTION XI: Consent to Service and Attestation

■ By checking this box, {Name of Entity} consents that service of any civil action brought by, or notice of any proceeding before, the Securities and Exchange Commission in connection with the association's activities may be given by registered or certified mail to the contact employee at the main address, or mailing address if different, given in Section I above; and represents that the information and statements contained herein, including exhibits, schedules, or other documents attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true, and complete.

BILLING CODE 8011–C

Form 15A General Instructions

A. General Instructions for Preparing and Filing Form 15A

Form 15A is to be used by an entity for registration with the Securities and Exchange Commission (the ''Commission'') as a national securities association or an affiliated securities association, and for any amendments or supplements to such registration statement under Section 15A of the Exchange Act. As used hereinafter, the term ''Form 15A'' includes the form and any required exhibits and schedules thereto.

Form 15A shall be filed in an electronic format through the Commission's Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S–T (17 CFR Part 232).

Unless the context clearly indicates otherwise, the terms used in Form 15A have the meanings given in the Act. Note: The granting of registration is not to be deemed permanent approval of the association's rules and practices.

B. Need for Careful Preparation of the Completed Form, Including Schedules and Exhibits

A Form 15A that is not prepared and executed in compliance with applicable requirements may be returned as not acceptable for filing. Any filing so returned shall for all purposes be deemed not to have been filed with the Commission. *See also* Rule 0–3 under the Act (17 CFR 240.0–3). However, acceptance of Form 15A shall not constitute a finding that it has been filed as required or that the information submitted is true, current or complete.

C. When To Use the Form 15A

Form 15A is composed of seven types of submissions to the Commission pursuant to Section 15A of the Act and Rules 15aa–1 and 15aa–2 thereunder. In completing the Form 15A, a registrant shall select the type of filing and provide all information required by the rules and instructions thereunder. In submitting this Form, its exhibits, and its schedules, the person by whom it is executed represents that all information contained within is true, current and complete. The types of submissions are:

(1) Rule 15aa–1 submissions are applications for registration as a national securities association or an affiliated securities association. If Form 15A is being filed as an application for registration as a national securities association, all applicable items are required to be answered in full, except for items in Section IX. If Form 15A is being filed as an application for registration as an affiliated securities association, all applicable items are required to be answered in full. Note: The granting of registration is not to be deemed permanent approval of the association's rules and practices.

(2) Rule 15aa–2(a) submissions shall be filed promptly after the discovery of any inaccuracy in the registration statement or in any amendment or supplement thereto. All amended items are required to be answered in full. All amended exhibits or schedules are

required to be provided completely. Any item that is not being amended may be left blank. If no item in a section is being amended, the association may check the box next to the applicable section heading labeled ''Check if information has not changed since previous filing.''

(3) Rule 15aa–2(b) submissions shall be filed promptly after any change which renders no longer accurate any information contained or incorporated in the registration statement or in any amendment or supplement thereto, except that no current supplements need be filed with respect to changes in the information called for in Exhibit B. All supplemented items are required to be answered in full. All supplemented exhibits or schedules are required to be provided completely. Any item that is not being amended may be left blank. If no item in a section is being supplemented, the association may check the box next to the applicable section heading labeled ''Check if information has not changed since previous filing.'' Supplements setting forth changes in the information called for in Exhibit C need not be filed until 10 days after the calendar month in which the changes occur. If the submission is being filed solely to supplement changes in the information called for in Exhibit C, association should check the applicable box and provide the month and year in which the changes occurred. The association need not provide a current supplement to Exhibit C if it checks the box indicating it has complied with the requirements of Rule 15aa–2(b)(3).

(4) Rule 15aa–2(c) submissions are annual consolidated supplements to a registration statement as a national securities association or an affiliated securities association and shall be filed promptly after March 1 of each year. If the association is filing an annual consolidated supplement to a registration statement as a national securities association, all applicable items are required to be answered in full, except for items in Section IX. If the association is filing an annual consolidated supplement to a registration statement as an affiliated securities association, all applicable items are required to be answered in full. The association need not answer Item 6 if it checks the box indicating it has complied with the requirements of Rules 15aa–2(c)(1)(i)(A)–(B) and provides the applicable information.

(5) Rule 15aa–2(c)(2) submissions shall be filed promptly after the close of each fiscal year of the association. The association is required to provide a complete Exhibit B.

(6) Rule 15aa–2(c)(1)(ii) submissions shall be filed promptly by March 1, 2025, and every three years thereafter. The association is required either to provide a complete Exhibit A or check the boxes indicating it has complied with the requirements of Rules 15aa–2(c)(1)(ii)(A)–(B) and provide the applicable information.

(7) Rule 15aa–2(d)(2) submissions require the association to electronically file any notices, reports, circulars, loose-leaf insertions, riders, new additions, lists or other records of changes when, as, and if such records are made available to members of the association.

D. Documents Composing the Completed Form

The completed form filed with the Commission shall consist of Form 15A, responses to all applicable items, and any exhibits and schedules required in connection with the filing. Any item may be answered by reference to the page, article, section or paragraph of any document filed as an exhibit herewith which contains the information required. Unless the context otherwise requires, the terms ''rule of the association,'' as used in Form 15A shall include any provision of the association's constitution, charter, articles of incorporation or association and bylaws, and any rule of the association or any of its committees and any settled practice association or of any of its committees having the effect of a rule.

E. Contact Information and Filing of Completed Form

Each time an association submits a filing to the Commission on Form 15A, the association must provide the contact information required by Section X of the form. The contact employee must be authorized to receive all contact information, communications and mailings and must be responsible for disseminating that information within the association's organization.

Consult the EDGAR Filer Manual for EDGAR filing instructions, including the instructions for becoming an EDGAR Filer.

Appendix 6—Form 19b–4

* * * * *

General Instructions for Form 19b–4

* * * * *

F. Signature and Filing of the Completed Form

All proposed rule changes, amendments, extensions, and withdrawals of proposed rule changes shall be filed through the EFFS. All security-based swap submissions, advance notices, and amendments, extensions, and withdrawals of security-based swap submissions and advance notices shall be filed to a dedicated email address established by the Commission, *SBSwapsSubmissions@sec.gov* for security-based swap submissions and *AdvanceNoticeFilings@sec.gov* for advance notices. In order to file Form 19b–4 through EFFS, self-regulatory organizations must request access to the SEC's External Application Server by completing a request for an external account user ID and password. Initial requests will be received by contacting the Trading and Markets Administrator located on our website (*https://www.sec.gov*). An email will be sent to the requestor that will provide a link to a secure website where basic profile information will be requested.

A duly authorized officer of the self-regulatory organization shall electronically sign the completed Form 19b–4 as indicated on Page 1 of the Form. A registered clearing agency for which the Commission is not the appropriate regulatory agency also shall file with its appropriate regulatory agency three copies of the form, one of which shall be manually signed, including exhibits. A clearing agency that also is a designated clearing agency shall file with the Board of Governors of the Federal Reserve System (''Federal Reserve'') three copies of any form containing an advance notice, one of which shall be manually signed, including exhibits; provided, however, that this requirement may be satisfied instead by providing the copies to the Federal Reserve in an electronic format as permitted by the Federal Reserve. The Municipal Securities Rulemaking Board also shall file copies of the form, including exhibits, with the Federal Reserve, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

* * * * *

Appendix 7—Form CA–1

BILLING CODE 8011–P

United States Securities and Exchange Commission
Washington, DC 20549
Form CA-1: Application for registration or for exemption from registration as a clearing agency and for amendment to registration pursuant to the Securities Exchange Act of 1934 ("the Act")

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS
(See 18 U.S.C.1001 AND 15 U.S.C. 78ff(a))

Page 1 of ____ File No.: CA1-[acronym]-YYYY-####

Form Filing Submission Types

{Name of registrant} is making this filing pursuant to: (select one)

☐ Rule 17ab2-1(a) - Application (select one)
- ☐ Request for registration as a clearing agency
  - Does registrant request the Commission to consider granting registration in accordance with paragraph (c)(1) of Rule 17ab2-1 under the Act? Yes/No
- ☐ Request for exemption from registration as a clearing agency
- ☐ Rule 17ab2-1(d) and (e) Amendment to Application – Amendment ####
- ☐ Consent to Extension of Time
  - ☐ Date Extension Expires: mm/dd/yyyy
- ☐ Withdrawal of Application

☐ Rule 17ab2-1(e) Amendment to registration or exemption from registration as a clearing agency

☐ Sec. 17A(b)(1) – Conditions, reports, notices or other submissions to the Commission required as directed in any order approving applications for exemption from registration as a clearing agency

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Section I – Registrant Information

1) Name and Address Information

☐ Check box if this filing makes a name change of the Registrant

a) Name of Registrant:
   i) Previous name of registrant:

b) IRS Employee Identification Number: ##-##########

☐ Check box if this filing amends the name under which clearing agency activities are conducted.

c) Name under which clearing agency activities are conducted, if different:

i) Previous name under which clearing agency activities are conducted:

d) Address of principal place of business (Do not use a P.O. Box):

Street: _____
City_____, State_____ Zip Code_____
Business Telephone: ( ) _____-_____

e) Mailing Address: ☐ Same as above

Street: _____
City_____, State_____ Zip Code_____

2) Information about the person in charge of registrant's clearing agency activities:

Name: (First, Middle, Last) _____

Title: _____

Street: _____City_____, State_____ Zip Code_____

Email: _____Telephone: ( ) _____-_____

3) Legal Status of Registrant (select one):

☐ Corporation
☐ National Association
☐ Partnership
☐ Limited Liability Company
☐ Other (Specify):_____

Date of Incorporation or Organization: mm/dd/yyyy

Jurisdiction of Incorporation or Organization: {State/Territory}

Section II: Contact Employee Information

Provide the following information of the person at {name of registrant} prepared to respond to questions for this submission:

First Name: Last Name:
Title:
Email: Telephone:

Item No.	**Section III: General Information and Schedule A**: Respond to the questions below. Attach responses to Section III as Schedule A with the information required for each "yes" response, and for each other Item requiring a descriptive response, labeled as the appropriate Item. For any Item that is inapplicable, state as such.	

<table>
<tr><td>Item 4:
Other Arrangements</td><td>Does registrant have any arrangement with any other person under which, with respect to registrant's clearing agency activities, such other person processes, keeps, transmits or maintains any securities, funds, records or accounts of registrant or registrant's participants relating to clearing agency activities?

If yes, furnish, as to each such arrangement, the full name and principal business address of the other person and a brief summary of each such arrangement.</td><td>Yes/
No</td></tr>
<tr><td>Item 5:
Insurance Information</td><td>a) With respect to clearing agency activities, please provide the following information regarding the type of insurance carried or provided:

<table>
<tr><th>Type of Insurance</th><th>Yes</th><th>No</th><th>Amount of Coverage</th><th>Amount of Deductible</th></tr>
<tr><td>1. Blanket Bond</td><td>☐</td><td>☐</td><td>$</td><td>$</td></tr>
<tr><td>2. Fidelity</td><td>☐</td><td>☐</td><td>$</td><td>$</td></tr>
<tr><td>3. Errors and Omissions</td><td>☐</td><td>☐</td><td>$</td><td>$</td></tr>
<tr><td>4. Mail Policy</td><td>☐</td><td>☐</td><td>$</td><td>$</td></tr>
<tr><td>5. Air Courier</td><td>☐</td><td>☐</td><td>$</td><td>$</td></tr>
<tr><td>6. Lost Instrument</td><td>☐</td><td>☐</td><td>$</td><td>$</td></tr>
<tr><td>7. Other (Specify):</td><td>☐</td><td>☐</td><td>$</td><td>$</td></tr>
</table></td><td></td></tr>
<tr><td></td><td>b) If any of registrant's clearing activities are not covered by insurance, has provision been made for self-insurance?

If yes, indicate the provisions made for self-insurance (e.g., accounting reserve or funded reserve) and the amount thereof.</td><td>Yes/
No</td></tr>
<tr><td></td><td>c) As a result of registrant's clearing agency activities, is registrant exposed to loss if a participant fails to perform its obligations to the clearing agency, any other participant or any other person?

If yes, describe the operational, organizational or other rules, procedures or practices (citing rules if applicable) which result in registrant's exposure to loss.</td><td>Yes/
No</td></tr>
</table>

	d) Does the registrant maintain a clearing or participants' fund, mark to the market open obligations involving the purchase or sale of securities or otherwise require participants to protect registrant against losses to which it may be exposed as a result of a participant's failure to perform its obligations to the clearing agency, any other participant or any other person? If yes, describe the operational, organizational or other rules, procedures or practices (citing rules if applicable) which are designed to protect registrant against any such losses.	Yes/ No
Item 6: Audit Information	a) Is registrant audited by an independent accountant? b) If registrant is audited by an independent accountant, does the audit include a review of internal controls related to clearing agency activities? c) Fiscal year-end of registrant: mm/yyyy	Yes/ No Yes/ No
Item 7: Policies and Procedures	Describe the registrant's internal policies and procedures for reconciling differences (including long and short stock record differences and dividend differences) in its clearing agency activities?	
Item 8: Other	a) How many employees does registrant have engaged in clearing agency activities? ##### b) How many years has registrant performed clearing agency activities? #####	
Item 9: Other Regulatory	a) Are registrant's clearing agency activities subject to regulation by any Federal agency other than the Commission or by any state or political subdivision? If yes, specify the name of the agency, state or political subdivision:	Yes/ No
	b) Have the registrant's clearing agency activities been the subject of periodic examinations by any Federal agency other than the Commission or by any state or political subdivision? If yes, specify the name of the agency, state or political subdivision:	Yes/ No

Exhibit No.	**Section IV: Business Organization** All applicable items are required to be answered in full. Attach responses to Section IV with the information required as a descriptive response, labeled as the appropriate Exhibit. For any Exhibit that is inapplicable, state as such.

Exhibit A:	List any person who either directly or indirectly, through agreement or otherwise, may control or direct the management or policies of registrant. For each person listed, provide the full name and address and attach a copy of each written agreement or, if the agreements are unwritten, describe the agreement or arrangement through which such person exercises or may exercise such control or direction.
Exhibit B:	List the registrant's corporate officers, trust officers, managers or other persons occupying a similar status or performing similar functions who supervise, or are directly responsible for the conduct of, registrant's clearing agency activities, indicating for each: (a) Name; (b) Title; (c) Area of responsibility; and (d) A brief account of the business experience during the last five (5) years.
Exhibit C:	Attach narrative and graphic descriptions of registrant's organizational structure. If clearing agency activities are conducted primarily by a division, subdivision, or other segregable entity within the registrant corporation or organization, identify the relationship of such entity to the registrant's overall organizational structure and limit the descriptions to the division, subdivision or other segregable entity which performs clearing agency activities.
Exhibit D:	Attach a list of persons who directly or indirectly, through one or more intermediaries, are controlled by, or are under common control with, the clearing agency and indicate the nature of the control relationship.
Exhibit E:	Attach a copy of the currently effective constitution, articles of incorporation or association, bylaws, rules, procedures and instruments corresponding thereto, of the registrant and a complete list of all dues, fees and other charges imposed by registrant for its clearing agency activities.
Exhibit F:	Attach a brief description of any material pending legal proceeding, other than ordinary and routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or to which any of its or their property is the subject. Include the name of the court or agency in which the proceeding is pending, the date instituted, and the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceeding known to be contemplated by governmental agencies.
Exhibit G:	Attach copies of all contracts with any national securities exchange, national securities association or clearing agency or securities market for which the registrant acts as a clearing agency or performs clearing agency functions.

Exhibit No.	**Section V: Financial Information** All applicable items are required to be answered in full. Attach responses to Section V with the information required as a descriptive response, labeled as the appropriate Exhibit. For any Exhibit that is inapplicable, state as such.
Exhibit H:	Attach a balance sheet and statement of income and expenses, and all notes or schedules thereto of registrant, as of registrant's most recent fiscal year for which such information is available, certified by an independent accountant. (If certified financial information is not available, uncertified financial information should be submitted).
Exhibit I:	Attach the addresses of all offices in which clearing agency activities are performed by registrant, or for registrant by any person listed in response to Item 4, and identify the nature of the clearing activities performed in each office listed.

Exhibit No.	**Section VI: Operational Capacity** All applicable items are required to be answered in full. Attach responses to Section VI with the information required as a descriptive response, labeled as the appropriate Exhibit. For any Exhibit that is inapplicable, state as such.
Exhibit J:	Attach narrative descriptions of each service or function performed by the registrant.
Exhibit K:	Attach a description of the measures or procedures employed by registrant to provide for the security of any system which performs the functions of a clearing agency. Include a general description of any operational safeguards designed to prevent unauthorized access to the system (including unauthorized input or retrieval of information for which the primary record source is not hard copy). Identify any instances within the past year in which the described security measures or safeguards failed to prevent unauthorized access to the system and describe any measures taken to prevent a recurrence of any such incident. Describe also any measures used to verify the accuracy of information received or disseminated by the system.
Exhibit L:	Attach a description of the measures or procedures employed by registrant to provide for the safeguarding of securities and funds in its custody or control. Identify any instances within the past year in which the described security measures or safeguards failed to prevent any unauthorized access to securities or funds in possession of registrant and any measures taken to prevent a recurrence of any such incident.

Exhibit M:	If clearing agency functions are performed by automated facilities or systems, attach a description of all backup systems or subsystems which are designed to prevent interruptions in the performance of any function as a result of technical or other malfunction. Include backups for input or output links to the system and precautions with respect to malfunctions in any areas external to the system.

Exhibit No.	**Section VII: Access to Services** All applicable items are required to be answered in full. Attach responses to Section VII with the information required as a descriptive response, labeled as the appropriate Exhibit. For any Exhibit that is inapplicable, state as such.
Exhibit N:	Attach a list of the persons who currently participate, or who have applied for participation, in registrant's clearing agency activities (if registrant performs more than one activity, a columnar presentation may be utilized).
Exhibit O:	Attach as a description of any specifications, qualifications, or other criteria which limit, are interpreted to limit, or have the effect of limiting access to, or use of, any clearing agency service furnished by the registrant and state the reasons for imposing such specifications, qualifications, or other criteria.
Exhibit P:	Attach copies of any form of contracts governing the terms on which persons may subscribe to clearing agency services provided by the registrant.
Exhibit Q:	Attach a schedule of any prices, rates or fees fixed by registrant for services rendered by its participants.
Exhibit R:	Attach a schedule of any prohibitions or limitations imposed by the clearing agency on access by any person to services offered by any participant.

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Section VIII: Application for Exemption

Exhibit S:

If this is an application for an exemption from registration as a clearing agency, attach a statement demonstrating why the granting of an exemption from registration as a clearing agency would be consistent with the public interest, the protection of investors and the purposes of Section 17A of the Act, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

Section IX: Sec. 17A(b)(1) Documents

Exhibit T:

For any conditions, reports, notices or other submissions to the Commission required as directed in any order approving applications for exemption from registration as a clearing agency attach such document(s) as Exhibit T.

Section X: Request for Confidential Treatment

The registrant is requesting confidential treatment be accorded with respect to certain of the information disclosed, and is furnishing a statement requesting confidential treatment, detailing the specific responses, schedules and exhibits for which confidential treatment is sought, and specifying both the exemptive provision under the Freedom of Information Act (5 U.S.C. 552(b)) on which the request is based and the considerations which make the exemptive provision applicable to the information for which confidential treatment is requested.

Section XI: Execution

{Name of Registrant} who is submitting this Form, its schedules, its exhibits and its attachments and the person by whom it is executed represent hereby that all information contained herein is true, current and complete. Submission of any amendment after registration has become effective represents that Items 1–3 and any schedules, exhibits and attachments related to Items 1–3 remain true, current and complete as previously submitted.

{Name of Registrant} agrees and consents that the notice of any proceedings under Sections 17A or 19 of the Act involving {name of registrant} may be given by sending such notice by registered or certified mail, or by whatever other means are allowed by law, to the person named, and at the address given, in response to Item 2.

Date {auto fill} {Name of Registrant}
By: ____[Digital Signature] ____
Title____

Form CA–1 General Instructions

A. General Instructions for Preparing and Filing Form CA–1

Form CA–1 is to be used by clearing agencies, as defined in Section 3(a)(23) of the Securities Exchange Act of 1934 (''the Act''), which perform the functions of a clearing agency with respect to any security other than an exempted security, as defined in Section 3(a)(l2) of the Act, to apply for registration or for exemption from registration or to amend registration with the

Securities and Exchange Commission (the ''Commission''). As used hereinafter, the term ''Form CA–1'' includes the form and any required schedules, exhibits or attachments thereto. A response is required for every exhibit. For any exhibit that is inapplicable, a statement to that effect shall be furnished in lieu of such exhibit.

Form CA–1 shall be filed in an electronic format through the Commission's Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S–T (17 CFR part 232).

With the exception of certain attachments, Form CA–1 must be provided as an Interactive Data File in accordance with Rule 405 of Regulation S–T. This requirement does not extend to submissions that constitute copies of existing documents other than the financial statements (*e.g.,* the copy of the clearing agency's currently effective constitution, articles of incorporation or association, bylaws, rules, procedures and instruments corresponding thereto, that is required to be provided as Exhibit E; the copy of a form of participant agreement that is required to be provided as Exhibit P; any reports, assessments, or formal opinions provided by internal or external auditors, attorneys, or similar assessors, or other similar documents that were prepared for a purpose other than submission of the Form CA–1). The requirement to provide Form CA–1 as an Interactive Data File applies to each of the 3 submissions described in General Instruction H below.

In addition, with respect to a clearing agency for which the Commission is not the appropriate regulatory agency, as defined in Section 3(a)(34)(B) of the Act, Section 17(c)(1) of the Act requires such clearing agency to file with the appropriate regulatory agency for such clearing agency a signed copy of any application, document or report filed with the Commission. Each clearing agency should retain an exact copy of Form CA–1 for the clearing agency's records.

Unless the context clearly indicates otherwise, the terms used in Form CA–1 have the meanings given in the Act.

Unless the context otherwise requires, ''registrant'' means the entity on whose behalf Form CA–1 is filed, whether filed as a registration, as an application for exemption from registration or as an amendment to a previously filed Form CA–1.

B. Need for Careful Preparation of the Completed Form, Including Schedules and Exhibits

A Form CA–1 which is not prepared and executed in compliance with applicable requirements may be returned as not acceptable for filing. Any filing so returned shall for all purposes be deemed not to have been filed with the Commission. *See also* Rule 0–3 under the Act (17 CFR 240.0–3). However, acceptance of Form CA–1 shall not constitute a finding that it has been filed as required or that the information submitted is true, current or complete.

Individuals' names, except for executing signatures, shall be given in full wherever required (last name, first name, and middle name). The full middle name, if one exists, is required. Initials are not acceptable unless the individual legally has only an initial.

C. When to Use the Form CA–1

Form CA–1 is composed of 3 types of submissions to the Commission pursuant to Section 17A(b)(1) of the Act and Rule 17ab2–1 thereunder. In completing the Form CA–1, a registrant shall select the type of filing and provide all information required by the rules and instructions thereunder. For any exhibit that is inapplicable, a statement to that effect shall be furnished in lieu of such exhibit. In submitting this Form, its schedules, its exhibits and its attachments, the registrant and the person by whom it is executed represents that all information contained within is true, current and complete. The types of submissions are:

(1) Rule 17ab2–1(a) submissions are applications for registration as a clearing agency or for exemption from registration as a clearing agency. If Form CA–1 is being filed as a registration form or an application for exemption from registration, all applicable items are required to be answered in full. If any item is not applicable respond with ''none'' or ''N/A'' (not applicable) as appropriate. If the Form is filed as a registration, indicate whether the applicant requests the Commission to consider granting registration in accordance with paragraph (c)(1) of Rule 17ab2–1. If Form CA–1 is being filed as an application for exemption from registration, it must be accompanied by a statement, marked as Exhibit S, demonstrating why the granting of an exemption from registration as a clearing agency would be consistent with the public interest, the protection of investors and the purposes of Section 17A of the Act.

(2) Rule 17ab2–1(e) submissions shall be filed promptly following the date on which information reported on Items 1–3 on Form CA–1 becomes inaccurate, incomplete or misleading. Submission of any amendment after registration has become effective represents that Items 1–3 and any schedules, exhibits and attachments related to Items 1–3 remain true, current and complete as previously submitted.

(3) Sec. 17A(b)(1) submissions shall be filed as directed by any order approving an application for exemption from registration as a clearing agency. Such submissions may include any report, notice or other submission as ordered by the Commission as a condition of granting exemption from registration.

D. Documents Composing the Completed Form

The completed form filed with the Commission shall consist of Form CA–1, responses to all applicable items, and any schedules and exhibits required in connection with the filing. Each filing shall be marked on Form CA–1 with the initials of the registrant, the four-digit year, and the number of the filing for the year (*e.g.,* CA1-initials–YYYY–XXX).

E. Contact Information; Signature; and Filing of Completed Form

Each time a registrant submits a filing to the Commission on Form CA–1, the registrant must provide the contact information required by Section II of the form. The contact employee must be authorized to receive all contact information, communications and mailings and must be responsible for disseminating that information within the registrant's organization.

Consult the EDGAR Filer Manual for EDGAR filing instructions, including the instructions for becoming an EDGAR Filer.

If Form CA–1 is filed by a corporation, it shall be signed in the name of the corporation by a principal officer duly authorized; if it is filed other than by a corporation it shall be signed by a duly authorized principal of the organization filing the Form. As used in this Form, principal officer means the president, vice president, treasurer, secretary, comptroller or any other person performing a similar function.

The EDGAR receipt confirmation that demonstrates who filed the Form CA–1 shall be preserved pursuant to the requirements of Section 17 of the Act and any rules and regulations thereunder. *See, e.g.,* Rule 17a–1 under the Act (17 CFR 240.17a–1).

Request for Confidential Treatment

In responding to, and furnishing the schedules required by, the items on Form CA–1, the registrant may request that confidential treatment be accorded with respect to the information disclosed. The registrant must furnish a statement requesting confidential treatment, detailing the specific responses, schedules and exhibits for which confidential treatment is sought, and specifying both the exemptive provision under the Freedom of Information Act (5 U.S.C. 552(b)) on which the request is based and the considerations which make the exemptive provision applicable to the information for which confidential treatment is requested.

F. Notice

Disclosure to the Commission of the information requested in Form CA–1 (except for the disclosure by an individual registrant of his Social Security number as an IRS Employee Identification Number, which is voluntary) is a prerequisite to the processing of applications for registration or for exemption from registration as a clearing agency.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid control number. Under Sections 17, 17A(b) and 23(a) of the Act and the rules and regulations thereunder, the Securities and Exchange Commission is authorized to solicit the information required to be supplied by this Form from applicants for registration or for exemption from registration as a clearing agency. *See* 15 U.S.C. 78q, 78q–1(b) and 78w(a).

The information will be used for the principal purpose of determining whether the Commission should grant registration or an exemption from registration or institute proceedings to deny registration. Social Security numbers, if furnished, will be used only to assist the Commission in identifying

applicants and, therefore, in promptly processing applications.

It is estimated that a clearing agency will have an average burden of approximately 338 hours completing a new application on the Form CA–1, and 58 hours completing an amendment to an application on the Form CA–1. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on the facing page of Form CA–1 and any suggestions for reducing this burden.

It is mandatory that an applicant seeking to operate as a clearing agency or as an exempt clearing agency file Form CA–1 with the Commission. It is also mandatory that registrants file amendments to Form CA–1 under Rule 17ab2–1(e).

Information supplied on this Form will be included routinely in the public files of the Commission.

[FR Doc. 2024–30433 Filed 1–17–25; 8:45 am]

BILLING CODE 8011–01–P



FEDERAL REGISTER

Vol. 90 Tuesday,
No. 12 January 21, 2025

Part III

Office of Personnel Management

5 CFR Part 532
Prevailing Rate Systems; Change in Criteria for Defining Appropriated Fund Federal Wage System Wage Areas; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

[Docket ID: OPM–2024–0016]

RIN 3206–AO69

Prevailing Rate Systems; Change in Criteria for Defining Appropriated Fund Federal Wage System Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to change the regulatory criteria used to define Federal Wage System (FWS) wage area boundaries and make changes in certain wage areas. The purpose of this change, which will affect around ten percent of the FWS workforce, is to make the FWS wage area criteria more similar to the General Schedule (GS) locality pay area criteria. This change is based on a December 2023 majority recommendation of the Federal Prevailing Rate Advisory Committee (FPRAC), the statutory national-level labor-management committee that advises OPM on the administration of the FWS.

DATES:

Effective date: This rule is effective October 1, 2025.

Applicability date: Changes to wage schedules resulting from the revised wage areas of application in appendix C to subpart B of 5 CFR part 532 apply on the first day of the first applicable pay period beginning on or after October 1, 2025. Changes to wage survey areas apply at various times beginning on or after October 1, 2025, based on the annual schedule of wage surveys, as listed in appendix A to subpart B of 5 CFR part 532, and with the timing of survey area expansions for affected wage areas as noted in the wage area listings in appendix C to subpart B of 5 CFR part 532.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, by telephone at (202) 606–2858 or by email at *paypolicy@opm.gov*.

SUPPLEMENTARY INFORMATION:

Overview

There are two major job classification and pay systems in use by the Federal Government: the GS and the FWS. The GS covers around 1.5 million employees, and the FWS covers around 200,000 employees with around 170,000 in the appropriated fund system. On October 11, 2024, OPM issued a proposed rule (89 FR 82874) to change the regulatory criteria used to define FWS wage area boundaries for the appropriated fund system and make changes in certain wage areas. Specifically, OPM proposed to amend 5 CFR 532.211 to make the criteria OPM uses to define the geographic boundaries of FWS wage areas more similar to the GS locality pay area criteria and to define revised wage area boundaries in accordance with those revised criteria.

The 60-day comment period ended on December 10, 2024. OPM received 585 comments from Members of Congress, labor organizations, several hundred Federal employees, and one agency. Public comments, with one exception, strongly supported changing the regulatory criteria in 5 CFR 532.211. After consideration of public comments about the proposed rule, OPM is issuing a final rule that amends the regulatory criteria in 5 CFR 532.211, pursuant to its authority to issue regulations governing the FWS in 5 U.S.C. chapter 53, subchapter IV. In general, this final rule implements changes to certain wage areas, as identified in the proposed rule. This final rule also reflects a few corrections, which are described in detail after the discussion of comments, and it makes nonsubstantive changes to the authority citations for part 532 by amending the existing authority citations to comply with 1 CFR part 21, subpart B.

Background

During the period GS locality pay was being introduced in the early 1990s, FPRAC [1] examined the differences in criteria between the GS and FWS, and by consensus, recommended that OPM not change the FWS criteria just for the sake of changing the criteria to make the systems look more similar. Locality pay for GS employees was a new and unproven concept at that time. Since then, however, the differences in geographic pay area boundaries for the GS and FWS have increasingly raised concerns among employees, their unions, local management officials, and consequently Members of Congress.

As stated in the proposed rule, since around 2006 the labor and employing agency representative members of FPRAC have discussed the possibility of making FWS wage areas more similar to GS locality pay areas, but there was not a consensus for change. The labor organization members expressed views that the difference in geographic treatment between the FWS and GS systems is inequitable. The management members expressed views that the differences best meet the intent of the relevant laws that established the two systems.

In House Report 117–79 [2] accompanying the National Defense Authorization Act for Fiscal Year (FY) 2022, Congress encouraged OPM ''to explore limiting the number of local wage areas defined within a GS Pay Locality to a single wage area.'' Given the magnitude of the potential change in policy, FPRAC established a labor-management working group to study various issues concerning the FWS, including options on how to make the geographic wage area boundaries of FWS and GS pay areas more similar. At its 649th meeting, on December 21, 2023, based on working group discussions, FPRAC recommended by a 9 to 1 majority vote that OPM revise the regulatory criteria for defining wage areas so that wage area criteria approved by the Director of OPM will be more similar to GS locality pay area criteria approved by the President's Pay Agent.

OPM examined FPRAC's arguments and concluded that the amendments to 5 CFR 532.211 constitute an improvement to the FWS. OPM determined that the changes to the regulatory criteria used to define and maintain FWS wage areas will address the lack of equity that arises when FWS workers within a given GS locality pay area are paid from two, three, or more different wage schedules, while the GS employees who work alongside them are all paid from the same salary schedule. Implementation of the amendments to 5 CFR 532.211 will resolve equitably several of the thorniest issues on FPRAC's agenda related to specific geographic areas, such as the Tobyhanna Army Depot and other long-standing areas of interest, such as folding in the Narragansett Bay, Rhode Island, FWS wage area with the Boston wage area, redefining Monterey County, California, to the San Francisco, CA, wage area, and redefining Shawnee

[1] The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal prevailing rate employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347. The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Director of OPM on the Governmentwide administration of the pay system for blue-collar Federal employees. Transcripts of FPRAC meetings can be found under the Federal Wage System section of OPM's website (*https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/federal-wage-system/#url=FPRAC*).

[2] House Report 117–79 can be found at *https://www.govinfo.gov/content/pkg/CRPT-117hrpt79/pdf/CRPT-117hrpt79.pdf*.

County, Kansas to the Kansas City, Missouri, wage area.

Comments Received on the Proposed Rule

Implementation Timeline

OPM invited comments on the implementation timeline and requested input regarding any alternative implementation plans. OPM received over 100 comments regarding the implementation timeline from employees, many of whom requested that the final rule be implemented ''as soon as possible.'' See, *e.g.,* Comments 008, 174, and 492.[3]

In addition, several commenters questioned the effective date of the proposed change recommending retroactive applicability. See, *e.g.,* Comments 176, 187, 224, 227, and 414. OPM defines wage areas through regulations in 5 CFR part 532. Changes in OPM's FWS regulations are prospective, not retroactive. OPM lacks authority to implement this change on a retroactive basis.

As OPM discussed in the proposed rule, many of the operational aspects of this rule could be achieved relatively quickly following publication of the final rule; however, one potential approach that OPM highlighted was to delay the effective date of the final rule to address budgetary constraints. OPM noted that, although the overall budgetary impact of the rule is relatively small, the impact at the local level could be considerable, making it difficult for local units to manage sudden, unexpected increases in payroll. Given that this final rule is publishing in the middle of FY 2025 and while agencies are operating under a continuing resolution, OPM has concluded that imposing the unplanned-for payroll costs 30 days after publication, in the middle of the fiscal year, would place undue burdens and potentially unmanageable costs on multiple agencies. OPM recognizes that the delayed implementation date has real impacts on individual employees, but this rule will result in long-term structural changes that will increase equity between FWS and GS employees within defined geographic areas. OPM expects that, by delaying the effective date until the beginning of the next FY, agencies will be able to better plan for and manage increased payroll expenses, leading to a more effective implementation of this change. OPM recognizes that a longer lead time (*e.g.,* FY 2027) would further ease the transition for agencies; however, OPM believes that organizational interests need to be balanced with the impact that further delays may have on employees. Accordingly, balancing the governmental interests and the interests of employees, this final rule will be effective on October 1, 2025, the first day of FY 2026. Changes in pay based on the updated wage area boundaries will be effective the first day of the first pay period following October 1, 2025.

Several commenters mentioned that the affected counties will be moved to the new wage areas after the new full-scale surveys. See, *e.g.,* Comments 93, 236, 238, and 287. We note that only changes to the survey areas will be staggered across FYs 2026 to 2028 as reflected in the amended survey schedule in appendix A to subpart B of 5 CFR part 532 and appendix C to subpart B of part 532. These schedule changes will allow the Department of Defense (DOD) sufficient time to plan for conducting full-scale wage surveys in survey areas that will expand significantly, in some cases doubling, in geographic size. As described in the proposed rule, a survey area county that is removed from a current wage area that is being eliminated and defined to a different wage area that is being continued but revised in this rule would initially be added to the area of application of the gaining wage area rather than being defined directly to the survey area. The county would subsequently be incorporated into the relevant wage area's survey area based on the timing of full-scale local wage surveys. For example, Calhoun County, AL, is currently part of the Anniston-Gadsden, AL, survey area. Under this rule, Calhoun County will be moved to the Birmingham-Cullman-Talladega, AL, area of application, effective the first day of the first pay period following October 1, 2025, until January 2028. Calhoun County will subsequently be moved from the Birmingham-Cullman-Talladega, AL, area of application to the Birmingham-Cullman-Talladega, AL, survey area, effective for wage surveys beginning in January 2028, coinciding with the survey cycle for this wage area.

Under this final rule, there will be an initial implementation resulting in wage rate increases for most affected employees. Once surveys have been conducted in the expanded survey areas, wage schedules will be adjusted. However, OPM anticipates that the long-standing pay cap and floor increase provisions will control subsequent wage schedule adjustments. (See 89 FR 82875 for discussion of the pay cap and floor increase provisions.)

Impact on Local Businesses

OPM requested public comments from local businesses on the implementation and impacts of moving the small number of FWS employees who would be affected by the proposed rule to different wage schedules and the likelihood that the changes would affect those businesses. We only received one comment—from a Federal employee who also owns a plumbing business—stating that ''the private sector pays so much more than the government would ever be willing to'' and that he would not be able to hire anyone if his business paid rates as low as the FWS. Comment 343. As explained in the proposed rule and further detailed in this final rule, over the years, the FWS goal of setting pay in line with prevailing private sector rates has been diminished by appropriations legislation provisions that have capped FWS wage schedule adjustments regardless of local market conditions. On January 27, 2022, OPM approved DOD requests to establish special rates[4] to establish a minimum pay rate of $15 per hour for Appropriated Fund and Nonappropriated Fund FWS employees, in accordance with Compensation Policy Memorandum (CPM) 2022–02, ''Achieving a $15 Per Hour Minimum Pay Rate for Federal Employees.''[5] This policy helped address the gap between FWS and private sector wage levels overall, but pay gaps are still substantial in different parts of the country as a result of the wage schedule adjustment cap.

FWS vs GS

Locality Pay

OPM received numerous comments from employees supporting FWS employees receiving ''locality pay.'' As stated in the proposed rule, FWS and GS employees are paid under separate pay systems. The pay systems differ because they are governed by separate laws and regulations authorizing different types of surveys, occupational and geographic coverage, pay adjustment cycles, and pay ranges. The Federal Employees Pay Comparability Act of 1990 was enacted to provide locality pay to GS employees. FWS employees are specifically excluded

[3] A reference at the end of a comment summary provides the location of the item in the public record. (*i.e.,* the three-digit number associated with the location in the docket). Comments filed in response to the proposed rule are available at *OPM–2024–0016–0nnn,* where ''nnn'' is the comment number. Note that the number must be three digits, so insert preceding zeroes as appropriate.

[4] The ''Special rates'' section later in this rule provides more information about the role of special rates.

[5] The ''Achieving a $15 Per Hour Minimum Pay Rate for Federal Employees'' memorandum may be found at *https://chcoc.gov/content/achieving-15-hour-minimum-pay-rate-federal-employees.*

from coverage under the locality pay system for GS employees because FWS employees have their own statutory local prevailing rate pay system. As such, GS locality pay percentages, which are add-ons to the base GS pay table, by law do not apply to the FWS. Instead, through annual appropriations legislation, employees in the FWS receive at least the same annual percentage pay adjustment as GS employees based on where they work.

Likewise, there were several comments from FWS employees reflecting a misunderstanding of the intent of this rule, with some comments suggesting that FWS employees will be moved to the GS pay scale. That is not what this rule does. We reiterate that the FWS and GS are different statutory pay systems, and this rule is focused to address the major issue identified for administrative resolution by FPRAC, which is to change the regulatory criteria for wage areas such that wage area definitions will, in almost all cases, follow the same labor market definitions and consider the same economically integrated regions as used for GS non-Rest of U.S. (RUS) locality pay areas. The FWS and GS will continue to be distinct and separate job classification and pay systems.

Cost of Living

Numerous employees argued that amending the regulatory criteria used to define and maintain FWS wage areas is necessary because of a high cost of living. See, *e.g.,* Comments 17, 112, 329, 459. OPM notes that, by law, the cost of labor within a wage area, rather than the cost of living, determines FWS pay rates. Similarly, GS locality payments are not based on living costs but on salary surveys done by the Bureau of Labor Statistics, as required by law.

Annual Pay Adjustments Timing

Other commenters indicated that annual pay increases for FWS and GS employees do not coincide and that FWS employees receive their pay adjustments several months after GS employees. Both GS and FWS workers receive only one annual pay adjustment each year. FWS employees do not necessarily receive pay adjustments after GS employees; they are just on a different annual cycle than GS employees. Pay adjustments for the GS and FWS have separate effective dates. The annual adjustments for GS employees are made in January of each year (see 5 U.S.C. 5303(a)). Because FWS employees are paid according to local prevailing rates, FWS pay rates are adjusted each year based on prevailing private sector wage levels for similar work in a local wage area subject to pay cap and floor increase provisions. DOD obtains the rates paid by local private sector employers by conducting annual local wage surveys. The wage surveys are scheduled throughout the year and, consequently, the pay increases are effective based on when wage surveys are completed throughout the year (see 5 U.S.C. 5344(a)). For example, FWS employees in the Boston, MA, wage area receive pay adjustments that are effective in October each year, three months earlier in the FY than GS employees receive their pay adjustments. (Pay increases for FWS employees typically occur in October, whereas GS increases typically take effect in January.)

Grade and Steps Structure

A few commenters also expressed concerns regarding the FWS and GS grades and steps structure. For example, one commenter said that FWS and GS grades do not align and another asserted that, while FWS grades are divided into 5 steps, GS grades are divided into 10 steps. See, *e.g.,* Comments 221 and 312. As already stated, differences between the FWS and GS pay systems include occupational coverage and pay ranges.[6] The FWS pay system covers most trade, craft, and laboring employees (blue-collar workers) in the Executive Branch and has existed in various forms based on local prevailing wage levels since 1862. The FWS has a multi-level job-grading system that includes the full range of trade, craft, and laboring jobs. Occupations often cover more than one grade level, and many occupations are typically represented at each grade. Regardless of occupation, the pay range for all regular schedule jobs at a particular grade level in a specific wage area is the same.

The FWS pay structure is primarily divided into wage grade nonsupervisory (WG), wage leader (WL), and wage supervisor (WS) hourly wage schedules. The WG and WL schedules have 15 levels or grades each, and the WS schedule has 19 grades. Generally, each grade represents progressively more difficult levels of work requiring higher levels of skills and/or experience. Employees are paid the full prevailing rate at step 2 of each grade level. Step 5, the highest step in the FWS, is 112 percent above the prevailing rate of pay. The FWS grade structure is established under 5 U.S.C. 5343(e)(1). The FWS regular wage schedule regulations can be found at 5 CFR 532.203.

The GS pay system covers most white-collar civilian Federal employees. The GS has 15 grades (GS–1 through GS–15). Again, each grade represents progressively more difficult levels of work requiring higher levels of knowledge and/or experience. Each grade has a range of salary divided into 10 steps. The GS grade structure is established under 5 U.S.C. 5332(a)(2).

Hazard Pay

One commenter noted that FWS employees ''make less money for equivalent work'' and ''only get hazard pay for the hours (. . .) in a hazard zone.'' Comment 48. Other commenters suggested that their work duties are more hazardous than those of GS employees. See, *e.g.,* Comments 79, 295, 481. Hazardous duty pay (HDP) is paid to qualifying GS employees and Environmental Differential Pay (EDP) is paid to qualifying FWS employees. HDP and EDP have separate legal authorities. The legal authority for HDP is found in 5 U.S.C. 5545(d). The legal authority for EDP is found in 5 U.S.C. 5343(c)(4). The regulations for GS HDP are in 5 CFR 550.901. The regulations for FWS EDP are in 5 CFR 532.511.

Under 5 CFR 532.511, an FWS employee must be paid an environmental differential when exposed to a working condition or hazard that falls within one of the categories approved by OPM. Although OPM issues EDP regulations, each agency is responsible for evaluating local situations to determine if it should pay EDP. This responsibility was given to the agencies because each local agency and installation can best determine the nature of the work performed by its employees. In order to receive a differential, there must be actual exposure to the environmental condition. An environmental differential is paid either on the basis of actual exposure or on the basis of hours in pay status.[7]

[6] OPM provides information regarding the classification process and job grading criteria for GS employees in Classifying General Schedule Positions available at *https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/#url=Standards;* and for FWS employees in Classifying Federal Wage System Positions (available at *https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-federal-wage-system-positions/#url=Standards*) and Introduction to the Federal Wage System Job Grading System (available at *https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-federal-wage-system-positions/fwsintro.pdf*).

[7] Information on EDP may be found in Subchapter S8 Pay Administration in the *Federal Wage System Appropriated Fund Operating Manual* at *https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/federal-wage-system/#url=Appropriated-Fund.* The Schedule of Environmental Differentials Paid for Exposure to Various Degrees of Hazards, Physical Hardships, and Working Conditions of an

GS Supervisory Differential

One commenter stated that special rates established for FWS employees in their area led to some GS employees making less than FWS employees they are supervising. Comment 330. GS supervisors may receive a supervisory differential when they have a higher paid subordinate that is not covered by the GS pay system. OPM encourages GS employees to discuss such matters with their employing agency's human resources office for any policy guidance their agency uses in similar situations. We note that there is no authority to pay a supervisory differential to an FWS employee supervising a higher paid subordinate who is under a different pay system.

Pay Increases for FWS Employees Impacted by This Rule

OPM received various comments from FWS employees reflecting a misunderstanding of the expected impact on wages for FWS employees as a result of implementing this rule, with some comments indicating a ''12 percent across-the-board pay increase.'' See, *e.g.,* Comments 70, 83, 137, 257, and 499. As explained in the ''Impact'' section of the proposed rule, the pay increases will vary considerably, based on wage area and grades. For example, pay increases for FWS employees in Monroe County, PA, who will be moved to the New York, NY, wage area, will vary from around $0.49 per hour at grade WG–01 to $7.85 per hour at grade WG–15 based on current wage levels. In some wage areas employees will be placed on lower wage schedules and either be covered by pay retention rules or experience a reduction in pay if they are not eligible to retain a rate of pay.

Recruitment and Retention Issues

Many commenters indicated that the changes to the regulatory criteria in 5 CFR 532.211 are necessary because of recruitment and retention issues. For example, several commenters stated that placing FWS employees in the same geographic area as GS employees for pay setting purposes would help recruit and retain skilled candidates. See, *e.g.,* Comments 50, 74, 120, and 284. While we acknowledge that pay increases may help address some recruitment and retention issues, the changes in criteria used to define and maintain FWS wage areas are not driven by recruitment or retention challenges, and FWS area definition criteria have never considered recruitment and retention criteria, just as GS locality pay area criteria contain no mention of recruitment or retention. This rule seeks to make the labor market determinations and pay area boundaries more similar, as recommended through National Defense Authorization Act (NDAA) language, by using similar criteria in both pay systems, and to therefore advance greater equity between the two systems.

Comments Regarding Specific Wage Areas

Southern Missouri FWS Wage Area

OPM received a few comments from FWS employees requesting that several counties in the Southern Missouri wage area be redefined to the St. Louis, MO, wage area (see, *e.g.,* Comments 259 and 296) and one comment requesting that Butler County, MO, be redefined to either the St. Louis wage area or Memphis, TN, wage area (Comment 264). Some commenters expressed concerns that FWS rates of pay in Southern Missouri are lower than those received by employees who work in the St. Louis wage area, by GS employees, or by people who work in comparable jobs in the private sector. See, *e.g.,* Comments 57, 203, 253, 263, 264, 265, 296, and 395.

Neither the current regulatory criteria nor the new criteria support the suggested changes to the Southern Missouri wage area. As stated in the proposed rule, OPM must receive the advice of FPRAC before reviewing and making any changes to wage area boundaries. Any management or labor member of FPRAC may introduce a subject for discussion by the Committee. For example, for FPRAC to consider a proposal to change the definition of a county, a member of the Committee must introduce the matter for discussion. It is the Chair's responsibility to approve items to be discussed on the Committee's agenda. FWS employees may wish to consider going through the chain of command within their employing agency or through their labor union representative to bring issues to FPRAC's attention.

We note that local wage surveys in the Southern Missouri wage area continue to meet all requirements for determining prevailing wage rates in the local labor market. The wage schedule for the Southern Missouri wage area is based on data collected from Christian, Greene, Laclede, Phelps, Pulaski, and Webster Counties, MO. The difference in rates of pay between the Southern Missouri wage area and other wage areas, including St. Louis, MO, and Memphis, TN, reflects the fact that the prevailing cost of labor varies by wage area. It is not unusual for FWS employees who work in different wage areas to receive substantially different rates of pay even though they may have similar grade levels and job duties. For example, the wage rate for a WG–10, step 2, employee in the Southern Missouri wage area is $27.45, while it is $34.12 in the St. Louis wage area. These rates reflect the prevailing wage levels for this level of work in each wage survey area subject to annual pay cap and floor increase appropriations law provisions.

Puerto Rico Wage Area

OPM also received two comments inquiring if these changes will apply to the Puerto Rico wage area and asserting that pay rates in this wage area are lower than in other wage areas. See Comments 246 and 312. As stated in the proposed rule, changes to the criteria used to define and maintain wage areas will not result in any changes to the Puerto Rico wage area boundaries or pay. Likewise, as explained in response to the comments regarding the Missouri wage areas, FWS employees are paid different wage rates based on their location since the cost of labor varies from wage area to wage area. The pay system is neither designed nor intended to ensure all FWS employees receive the same wage rates in all regions.

Boston-Worcester-Providence, MA, Wage Area

OPM received several comments requesting that Hancock County, ME, and Acadia National Park be redefined to the new Boston-Worcester-Providence, MA, wage area. See, *e.g.,* Comments 348, 385, and 393. Hancock County and Acadia National Park are defined to the Central and Northern Maine wage area. Neither the current nor the new regulatory criteria support the redefinition of Hancock County and Acadia National Park to the Boston-Worcester-Providence wage area. We also note that Hancock County is not neighboring the Boston wage area with the Central and Northern Maine and the Boston-Worcester-Providence wage areas being separated by the Augusta, ME, wage area.

OPM received several comments requesting that Aroostook County, ME, be removed from the Central and Northern Maine survey area because it only has 15 FWS employees and does not meet the minimum 100 FWS employees working in the county requirement and that Hancock County

Unusual Nature is listed under Appendix J of this manual (available at *https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/federal-wage-system/appropriated-fund-operating-manual/appendixj.pdf*). Appendix J lists all the FWS EDP categories either as actual exposure categories or as hours in a pay status categories.

be added to this survey area instead. See, *e.g.,* Comments 389, 393, and 529. As previously mentioned, OPM proposes changes to wage areas, including changes to existing survey areas, based on the advice of FPRAC. FWS employees may wish to consider going through the chain of command within their employing agency or through their labor union representative to bring issues to FPRAC's attention.

OPM received a comment from an employee requesting the Kennebec County, ME, be redefined from the Augusta, ME, wage area to the new Boston-Worcester-Providence wage area. See Comment 388. Neither the current regulatory criteria nor the new criteria support this suggested change.

Mono and Inyo Counties, CA

OPM received a few comments from local government officials in Mono and Inyo Counties, CA, requesting that these two counties be redefined in their entirety to the Los Angeles, CA, wage area. See, *e.g.,* Comment 293. Currently, Mono County, with the exception of locations where the Bridgeport, CA, special schedule applies, is defined to the Reno, NV, wage area, and Inyo County, with the exception of the China Lake Naval Weapons Center portion, is defined to the Las Vegas, NV, wage area. Neither the current nor the new regulatory criteria support redefining these two counties in their entirety to the Los Angeles, CA, wage area. As mentioned previously, OPM proposes any changes to wage area definitions after FPRAC review and recommendation.

Yuma County, AZ

One agency recommended that Yuma County, AZ, be redefined from the San Diego County, CA, wage area to the Phoenix, AZ, wage area because the Federal Salary Council recommended the inclusion of Yuma County into the Phoenix-Mesa-Scottsdale, AZ GS locality Pay Area, still pending approval from the President's Pay Agent. Changes in GS locality pay area definitions will not result in automatic changes in FWS wage area definitions. Neither the current nor the new regulatory criteria support redefining Yuma County to the Phoenix, AZ, wage area. As already mentioned, OPM proposes any changes to wage area definitions after FPRAC review and recommendation.

San Diego, CA, Survey Area

OPM received a comment from an FWS employee in the San Diego, CA, wage area opposing the redefinition of Yuma County, AZ, from the San Diego area of application to the San Diego survey area. The commenter argued that the cost of living is lower in Yuma County than in San Diego County and adding survey data from Yuma County to the San Diego wage area would lead to overall lower pay in the wage area. Comment 394. As stated in the proposed rule, OPM is moving Yuma County to the San Diego survey area beginning in September 2027 because more than 100 FWS employees work in this county. This move is necessary to comply with the requirement that OPM include in survey areas all counties with 100 or more FWS employees. A future wage survey will determine the impact, if any, on wage levels that apply in the San Diego wage area and that would likely continue to be subject to annual appropriations legislation setting a cap and floor on wage schedule adjustments.

Southern Colorado Wage Area

OPM received three comments from FWS employees in the City of Colorado Springs, CO, expressing concerns that FWS rates of pay in the City of Colorado Springs are lower than those earned by people who work in comparable jobs in the private sector and in the Consolidated City and County of Denver. See, Comments 444, 454, and 455. The City of Colorado Springs, in El Paso County, CO, is defined to the Southern Colorado wage area, and the Consolidated City and County of Denver is defined to the Denver, CO, wage area. Local wage surveys in the Southern Colorado wage area continue to meet all requirements for determining prevailing wage rates in the local labor market. The wage schedule for the Southern Colorado wage area is based on data collected from El Paso, Pueblo, and Teller Counties, CO. The difference in rates of pay between the Southern Colorado and Denver wage areas, as previously mentioned regarding other wage areas, reflects the fact that the prevailing cost of labor varies by wage area.

Neither the current regulatory criteria nor the new criteria support a redefinition of the Southern Colorado wage area.

Gettysburg National Military Park

OPM received a comment from a labor organization local representative at the Gettysburg National Military Park requesting that this installation be defined to the new Washington-Baltimore-Arlington wage area, and pointing out that the cost of living is the same for both GS and FWS employees and that FWS employees are ''earning less than employees at the local Sheetz and warehouses.'' Comment 365.

The Gettysburg National Military Park is located in Adams County, PA, which is defined to the Harrisburg, PA, wage area, and part of the Harrisburg-York-Lebanon, PA, combined statistical area (CSA). The purpose of this rule is not to make the FWS system identical to the GS locality pay system but to no longer allow, in almost all cases, non-RUS locality pay areas to be split by FWS wage areas. Please see why Adams County will continue to be defined to the Harrisburg wage area in the ''Statement of Need'' subsection below.

Assateague Island

Two commenters stated that ''[t]he Assateague Island FWS exception needs to be eliminated,'' and argued that moving Worcester County, MD, to the Philadelphia-Reading-Camden, PA, wage area would lead to FWS employees at Assateague Island National Seashore being paid a lot less than counterparts working in the rest of Worcester County. Comments 333 and 546. OPM has been defining Worcester County (excluding the Assateague Island part) to the Wilmington, DE, wage area and the Assateague Island part of Worcester County to the current Norfolk-Portsmouth-Newport News-Hampton, VA, wage area. According to OPM data, there are 10 FWS employees working for the Department of the Interior, with a duty station in the Town of Chincoteague, Accomack County, VA. Since the duty station is located within the current Norfolk-Portsmouth-Newport News-Hampton wage area, this rule will continue to define the Assateague Island part of Worcester County to the new Virginia Beach-Chesapeake, VA, wage area. As already explained, OPM proposes any changes to wage area definitions, other than the ones automatically resulting from the application of revised regulatory criteria defining wage areas, after FPRAC review and recommendation.

Ft. Wayne-Marion, IN, Wage Area

OPM received one comment from a labor organization local representative requesting that the J.E. Roush Lake Project part of Huntington County and Wabash County, IN, be redefined from the Ft. Wayne-Marion, IN, wage area to the new Indianapolis-Carmel-Muncie, IN wage area. Comment 491. Neither the current regulatory criteria nor the new criteria support the suggested changes to the Ft. Wayne-Marion, IN, wage area. FPRAC may consider a proposal to review the definition of Huntington and Wabash Counties if a committee member introduces this issue for discussion.

Timing of the Local Wage Surveys

OPM received one comment from an FWS employee in the Central and Northern Maine wage area requesting that the local wage survey order month in this wage area be changed from May to August. Comment 393. Under 5 CFR 532.207, FWS wage surveys are scheduled to begin in specific months each year based on the following criteria: timing of wage surveys in relation to wage adjustments in principal local private sector establishments; reasonable distribution of survey workloads for the lead agencies; timing of wage surveys in nearby wage areas; and scheduling relationships with other pay surveys. FPRAC may consider a proposal to change a survey order month if a committee member introduces a proposal for discussion.

Conduct of Local Wage Surveys

One labor organization stated that the way local wage surveys are conducted needs reforming because they ''fail to accurately reflect the true conditions of the labor markets.'' Comment 543. Several other commenters also expressed concern about the results of the local wage surveys, saying that they fail to capture private sector wages. See, *e.g.,* Comment 259. One agency stated that, in certain survey areas, such as Narragansett Bay area, there are challenges in identifying private establishments with jobs comparable with the survey jobs willing to participate in surveys. As previously stated, the intent of this rule is to make the regulatory criteria OPM uses to define FWS wage areas more similar to GS locality pay areas and make changes to certain wage areas based on the revised criteria in 5 CFR 532.211. Any reforms to the local wage surveys collection process need to be reviewed by FPRAC.

Special Rates

One commenter requested that OPM consider special rates for Acadia National Park, Bar Harbor, and Mount Desert Island, in the Central and Northern Maine wage area. Comment 408. Another commenter requested extending special rates currently established in the Jacksonville, FL, wage area to FWS positions in Polk County, FL, which is being redefined to this wage area through this rule. Comment 346. Under 5 CFR 532.251, a lead agency with the approval of OPM may establish special rates for pay within all or part of a wage area for a designated occupation or occupational specialization and grade, in lieu of rates on the regular schedule. OPM may authorize special rates to the extent it considers necessary to overcome existing or likely significant handicaps in the recruitment or retention of well qualified personnel when these handicaps are due to any of the following circumstances: rates of pay offered by private sector employers for an occupation or occupational specialization and grade are significantly higher than rates paid by the Federal Government within the competitive labor market; the remoteness of the area or location involved; or any other circumstance that OPM considers appropriate. If an employing agency should find it necessary to establish special rates for FWS employees in the Central and Northern Maine or Jacksonville, FL, wage areas, it must submit data to DOD demonstrating staffing problems and certify the availability of sufficient funds to support a special rates request for specific occupations, grades, installations, and/or locations. If DOD concurs that special rates are necessary for those occupations, grades, installations, and/or locations, the request will be forwarded to OPM for review.

One agency asked how the changes in wage areas resulting from amending the regulatory criteria in 5 CFR 532.211 would affect existing special rates. OPM sees no basis for canceling existing special rates. Special rates sometimes apply wage area wide and sometimes apply to a specific Federal installation or set of occupations within a wage area. If an employee who is paid a special rate would be entitled to a higher wage rate from a regular wage schedule upon movement to a different wage schedule, the employee would be entitled to the higher wage rate on the regular wage schedule. OPM will continue to work closely with the lead agency to manage appropriate special wage rates to address recruitment or retention challenges.

Elimination of the ''Pay Cap'' Provision

One labor organization wrote in support of the elimination of the yearly ''pay cap'' provision from the appropriations legislation. Comment 543. As stated in the proposed rule, each year since fiscal year 1979, appropriations legislation has limited FWS pay adjustments so as not to exceed average GS pay adjustments. For FY 2024, the FWS pay limitation of 5.26 percent was in section 737 of division B of the Further Consolidated Appropriations Act, 2024. Congress originally imposed limits on FWS pay adjustments during the high inflation era of the late 1970's for budget purposes and to ensure that FWS pay rates did not increase more rapidly than GS pay rates. In certain high cost of labor areas, GS employees were leaving white-collar positions to take higher paying blue-collar positions. Federal employee organizations have strongly opposed FWS pay limitations since they were first imposed, but agencies were concerned about the budget impact of lifting the cap system-wide in any one fiscal year. At the October 20, 2022, FPRAC public meeting,[8] the Committee recommended by consensus that OPM should seek elimination of an annual provision placed in the Financial Services and General Government Appropriations Act that establishes a statutory limitation each year on the maximum allowable FWS wage schedule adjustment. OPM is considering available policy options and solutions to advance this policy change forward.

GS Locality Pay Areas

OPM received several comments requesting that Lucas County, OH, be included in the Detroit-Warren-Ann Arbor, MI, GS locality pay area. Comments 362, 363, and 356. Two other commenters requested that several counties in Western Colorado be added to the Denver-Aurora, CO, GS locality pay area. Comments 151 and 205. The purpose of this rule is to change the regulatory criteria used to define and maintain FWS wage areas and to redefine certain FWS wage areas established for the FWS pay system under 5 U.S.C. 5343. This rulemaking does not address boundaries of locality pay areas for the GS pay system and other pay systems that receive locality pay under 5 U.S.C. 5304.

One commenter wrote against the implementation of OPM's proposal, stating that adding outlying counties to the core GS locality pay area would lead to lower rates of pay for employees working within the Metropolitan Statistical Area and arguing that the FWS wage areas and GS locality pay areas should not be aligned until the GS system is reformed. Comment 417. This commenter also noted that FWS wage areas would not fully coincide with GS locality pay areas. As explained previously, the purpose of this rule is to make changes to the criteria used to define and maintain FWS wage areas and to redefine boundaries of FWS wage

[8] A copy of the October 20th, 2022 FPRAC meeting transcript may be found at *https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/federal-wage-system/federal-prevailing-rate-advisory-committee/meeting-number-642-october-20-2022.pdf.*

areas, according to the amended regulatory criteria. This rule is not meant to make changes to the GS system or consider ideas for reforming the GS system. Lastly, as stated in the proposed rule and reiterated in this final rule, the new wage area definitions are not intended to mirror GS locality pay areas, and some differences between the geographical boundaries of wage areas and locality pay areas will continue to exist.

Corrections

The proposed rule contained an error where Union County, PA, was listed in both the proposed Harrisburg-York-Lebanon (89 FR 82892 and 82916) and Scranton-Wilkes-Barre wage areas (89 FR 82893 and 82917). This error occurred because, while drafting the proposed rule, Union County was identified as one of the four counties of the Bloomsburg-Berwick CSA, which is within the Harrisburg, PA, wage area. Under the new wage area criteria, a CSA should not be split between two wage areas except in unusual circumstances. In this instance, OPM intended to make an exception to the metropolitan area criterion based on a comprehensive analysis of all of the wage area definition criteria.

The Federal Correctional Complex Allenwood in Union County has been defined to the Harrisburg wage area since it opened in the early 1990s, and OPM finds no compelling reason based on the mixed nature of a comprehensive analysis of the regulatory criteria to move Union County to a different wage area. From an organizational relationship perspective, there are other Bureau of Prisons institutions immediately to the south of Allenwood in Lewisburg, PA, that will be defined to the Harrisburg-York-Lebanon wage area. As correctly noted in the proposed rule, OPM's intent was to first define Union County, PA, to the Harrisburg-York-Lebanon area of application and then, effective for wage surveys beginning in May 2026, Union County would become part of the survey area for the Harrisburg-York-Lebanon wage area because there are more than 100 FWS employees with official duty stations in the county. This decision required that the Bloomsburg-Berwick CSA remain split between the Harrisburg-York-Lebanon and Scranton-Wilkes-Barre wage areas as an exception to the metropolitan area criteria. The Bloomsburg-Berwick CSA is comprised of four Micropolitan Statistical Areas with some of its counties geographically closer to Harrisburg and some closer to Scranton and Wilkes-Barre. The employment interchange criterion indicates that there are only marginal differences in commuting rates to and from the Bloomsburg-Berwick CSA as a whole and the Harrisburg-York-Lebanon and Scranton-Wilkes-Barre survey areas.

After recognizing that Union County was erroneously listed in two wage areas in the proposed rule, OPM is correcting the disposition of the following counties for the final rule. Columbia, Montour, and Northumberland Counties, PA, will be defined to the area of application of the Scranton-Wilkes-Barre wage area as noted in the proposed rule. Union County and Snyder County, on the west side of the Susquehanna River, will be defined to the Harrisburg-York-Lebanon wage area. Snyder County is located to the south of Union County and both counties are closest to Harrisburg.

Wayne County, PA, was erroneously listed as being part of the Scranton-Wilkes-Barre, PA, wage area in the ''Definitions of Wage Areas and Wage Area Survey Areas'' section (see 89 FR 82917). As correctly stated elsewhere in the proposed rule, Wayne County is moving to the New York-Newark, NY, wage area. (See 89 FR 82890, 82893, and 82914.)

The area of application designation for Palm Beach County, FL, was erroneously listed as January 2027 (see 89 FR 82883 and 82905); however, the proposal correctly identified May 2027 as the effective date for the survey area (see 89 FR 82905). This error occurred because currently the wage survey order month for the Miami-Dade, FL, wage area is January. However, DOD had requested certain changes in wage survey order months to allow balancing of the wage survey workload throughout the year, including revising the listing of the beginning month of survey from ''January'' to ''May'' for the Miami-Dade wage area (see 89 FR 82878). As such, OPM is correcting the area of application designation for Palm Beach County to read ''May.''

Expected Impact of This Final Rule

1. Statement of Need

OPM is issuing this rule pursuant to its authority in 5 U.S.C. 5343 to issue regulations governing the FWS. The purpose of these changes is to address longstanding inequities between the Federal Government's two main pay systems. While the pay systems are different in some ways, the concept of geographic pay differentials based on local labor market conditions is a key feature of both systems. The FWS regulatory criteria in 5 CFR 532.211 are being revised to better align FWS wage areas with non-RUS GS locality pay areas. The revised FWS criteria include CSA and micropolitan statistical area (MSA) definitions and employment interchange data reported by the Census Bureau that reflects social and economic integration in a region. Revised FWS wage area definitions are based on an analysis of these factors by FPRAC's working group and OPM's analysis of the criteria to be consistent with the FPRAC majority recommendation to use the new criteria. There is no intent that FWS wage areas will be identical to GS locality pay areas in all cases. In limited circumstances, such as with Adams and York Counties, PA, this rule will not result in all non-RUS locality pay areas no longer including more than one FWS wage area. The Harrisburg, PA, wage area, will continue to coincide with the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA and the Harrisburg-Lebanon, PA GS locality pay areas. Adams and York Counties, PA, are currently part of the Washington-Baltimore-Arlington GS locality pay area, based on a Federal Salary Council recommendation and Pay Agent decision to keep these counties defined to that locality pay area after a new GS locality pay area was later established for Harrisburg. Adams and York Counties will continue to be defined to the Harrisburg, PA, wage area because they are part of the Harrisburg-York-Lebanon, PA, CSA and to avoid splitting this CSA as will be required by the new regulatory criteria.

2. Impact

Per available data, OPM expects these changes will impact approximately 17,000 FWS employees nationwide or about 10 percent of the appropriated fund FWS workforce. The amendments to current regulatory criteria used to define and maintain FWS wage areas will result in numerous changes in the composition of many of these wage areas. As a result, several FWS wage areas will no longer be viable separately, and the counties in those abolished wage areas will be defined to another wage area.

Most employees affected by this approach will receive increases in pay, but some will be placed on pay retention if moved to a lower wage schedule or experience a reduction in pay if not eligible for pay retention. As such, about 85 percent of the affected employees (roughly 14,500 employees) will receive pay increases, about 11 percent (roughly 1,800 employees) will be placed on pay retention, around 3 percent (about 500 employees) will be placed at a lower wage level, and around 1 (less than 200 employees) percent will see no change in their wage

level because their current wage rate is identical to the wage rate on a wage schedule they will be moved to.

This rule primarily affects FWS employees of DOD and its components, although employees of many other agencies, including the Department of Veterans Affairs (VA), are impacted. For example, the Anniston-Gadsden, AL, wage area will be abolished and most of its counties will be added to the Birmingham-Cullman-Talladega, AL, wage area. FWS employees working in these counties will see their pay increased at most grades. For example, based on current wage levels, at grades WG–01 through WG–04 there will be no change in pay while, at grades WG–05 through WG–15, pay increases could vary from $0.72 per hour to $5.99 per hour. Likewise, based on these proposed changes, Monroe County, PA, will be moved to the New York, NY, wage area. As such, based on current pay levels, pay increases for FWS employees in Monroe County will vary from about $0.49 per hour at grade WG–01 to $7.85 per hour at grade WG–15. However, the Washington, DC, Baltimore, MD, and parts of the Hagerstown-Martinsburg-Chambersburg, MD, wage areas will be combined into a revised Washington, DC, based wage area. FWS employees will be moved to the existing Washington, DC, wage schedule, which will result in placement on a wage schedule with lower rates, based on current pay levels, than in the current Baltimore and Hagerstown wage areas at lower grade levels. This will primarily affect employees at lower grade levels at VA Medical Centers in these wage areas. For example, WG–2, step 2, for the Washington, DC, wage schedule is currently $18.47 per hour whereas it is $24.51 per hour for Baltimore, which will result in around a $6 an hour decrease, based on current wage levels, once this final rule goes into effect. Nonetheless, most employees will retain their current wage rates if they are not under temporary or term appointments. There are around 35 FWS employees at the Baltimore VA Medical Center under temporary appointments who will see an actual reduction in pay if their appointments are not changed to be permanent and assuming their temporary employment status will continue in future. At higher wage grades, employees in the Baltimore and Hagerstown wage areas will receive higher rates under a Washington, DC, based wage schedule based on current pay levels.

This final rule affects about 10 percent of FWS appropriated fund workers, and there will be 118 separate appropriated fund wage areas versus 130 today. The changes are limited in scope with most FWS employees seeing no impact at all on their wage levels.

This rule has potential budgetary impacts affecting three major Army Depots, in particular, that will need to be managed appropriately and effectively by employing agencies. It is noteworthy, however, that the overall budget impact of revising wage area boundaries under this final rule equates to about $140 million per year—only around 1 percent of the current base payroll for the FWS appropriated fund workforce as a whole.

As mentioned previously, 14 percent of the affected employees will be placed on retained pay status; however, a vast majority of the affected employees—about 85 percent—will receive a pay increase. OPM concludes that the benefits of this final rule outweigh the negative impacts since this rule will better equalize geographic pay area treatment across the Federal Government's two main pay systems. The pay retention law exists to alleviate potential decreases in wage rates caused by management actions such as changes in wage area boundaries. We also note that Federal agencies have considerable discretionary authority to provide pay and leave flexibilities to address significant recruitment and retention problems. Pay and leave flexibilities are always an option to address recruitment or retention challenges at any time. Agency headquarters staff may contact OPM for assistance with understanding and implementing pay and leave flexibilities when appropriate. Information on those flexibilities is available on the OPM website at *https://www.opm.gov/policy-data-oversight/pay-leave/pay-and-leave-flexibilities-for-recruitment-and-retention.*

Considering that a fairly small number of employees is affected, OPM does not anticipate this rule will have a substantial impact on the local economies or a large impact in the local labor markets. As these and future wage area changes may impact higher volumes of employees in geographical areas and could rise to the level of impacting local labor markets, OPM will continue to monitor the revised wage areas for such impacts.

As described below, OPM estimates the rule results in annualized transfers in the form of additional payroll of approximately $149.9 million and annualized costs of approximately $0.9 million over ten years at a 2 percent discount rate.

3. Baseline

The geographic boundaries of FWS wage areas and of GS locality pay areas are not the same. Around 1.5 million GS employees are in 58 locality pay areas and around 170,000 appropriated fund FWS employees are in 130 wage areas. However, since 2004, appropriations legislation has required that FWS employees receive the same percentage adjustment amount that GS employees receive where they work.[9] This provision is known as the floor increase provision. Consequently, the floor increase provision requires pay adjustments each FY that result in certain FWS wage areas having more than one wage schedule in effect where there are multiple wage areas within the boundaries of a single non-RUS GS locality pay area. Although a majority of FWS wage areas coincide only with part of the RUS GS locality pay area, many FWS wage areas coincide with parts of more than one GS locality pay area. In each situation where the boundary of a prevailing rate wage area coincides with the boundary of a single GS locality pay area boundary, DOD must establish one wage schedule applicable in the wage area. For example, the New Orleans, LA, FWS wage area coincides with part of the RUS GS locality pay area. In this case, the minimum prevailing rate adjustment for the New Orleans wage area in FY 2024 was the same as the RUS GS locality pay area adjustment, 4.99 percent.

[9] For FY 2024, the floor increase and pay cap provisions may be found in section 737 of Division B of the Further Consolidated Appropriations Act, 2024 (the FY 2024 Act), Public Law 118–47.

In each situation where a prevailing rate wage area coincides with part of more than one GS locality pay area, DOD must establish more than one prevailing rate wage schedule for that wage area, and therefore, FWS employees within the same wage area may receive substantially different rates of pay. For example, the boundaries of the Philadelphia, PA, FWS wage area coincide with parts of two different GS locality pay areas—New York-Newark, NY-NJ-CT-PA and Philadelphia-Reading-Camden, PA-NJ-DE-MD. In this case, DOD established two separate wage schedules for use during FY 2024 in the Philadelphia FWS wage area. In the part of the Philadelphia wage area that coincides with the New York-Newark, NY-NJ-CT GS locality pay area, the minimum prevailing rate adjustment was 5.53 percent and in the part coinciding with the Philadelphia-Reading-Camden, PA-NJ-DE-MD GS locality pay area, the minimum prevailing rate adjustment was 5.28 percent. OPM's guidance to agencies regarding FY 2024 FWS pay adjustments can be found at *https://www.chcoc.gov/content/fiscal-year-2024-prevailing-rate-pay-adjustments.*

Furthermore, at Tobyhanna Army Depot, the largest employer in Monroe County, PA, more than 1,000 Federal employees paid under the GS work in close proximity to more than 1,500 Federal employees paid under the FWS. Prior to 2005, Monroe County was part of the RUS GS locality pay area, while the county was (and is) part of the Scranton-Wilkes-Barre FWS wage area. In January 2005, Monroe County was reassigned from RUS to the New York GS locality pay area. As a result, all GS employees at Tobyhanna got an immediate 12 percent pay increase, of which 8 percent was attributable to the reassignment of Monroe County to the New York locality pay area. This led to a deep sense of unfairness on the part of FWS employees at Tobyhanna which continues to this day.

This final rule addresses most of the differences in pay among FWS employees within the same wage area and between FWS employees and GS employees working at the same location. It revises the wage area criteria for FWS to achieve better alignment between FWS wage areas and GS locality pay areas and addresses observable geographic pay disparities between FWS and GS employees that have been caused by using different sets of rules to define FWS wage areas and GS locality pay areas.

4. Costs

OPM employs four full-time staff, at grades GS–12 through GS–15, to discharge its responsibilities under the FWS. The annual cost is estimated at $753,215 based on an average salary of $188,304 and includes wages, benefits, and overhead. This estimate is based on the 2024 GS salary pay rate for the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA locality pay area. We do not anticipate an increase in administrative costs for OPM under this final rule.

During FPRAC discussions on methods to address the House Report language, it became apparent that DOD might need to hire additional staff members to conduct surveys in the expanded wage areas. However, there will also be fewer wage surveys to conduct each year because 12 wage areas will be abolished, and their survey counties moved to neighboring wage areas. Currently, DOD's operating costs for conducting FWS wage surveys and issuing wage schedules are estimated at $12 million, but it is reasonable to expect that additional specialist wage survey staff members may be needed to complete local wage survey work in the wage areas that will become larger in the time allotted [10] by statute for local wage surveys to be completed. OPM estimates that an average wage specialist at around the GS–9 level with a $70,000 a year salary in the Washington, DC, area could have a fully burdened cost of $140,000 to carry out the additional wage survey work. Allowing for six new DOD employees would increase government costs by around $840,000 for the first year. OPM requested comments regarding the costs of wage survey administration. One labor organization proposed a change in legislation so that wage schedules are calculated using data collected by the Bureau of Labor Statistics instead. Comment 478. As previously stated, this rulemaking amends the regulatory criteria used to define and maintain wage areas and redefine certain wage areas accordingly and cannot make regulatory changes that would require changes in existing law.

FWS wage surveys are conducted under the information collection titled ''Establishment Information Form,'' ''Wage Data Collection Form,'' and ''Wage Data Collection Continuation Form'' OMB Control number 3260–0036. DOD wage specialist data collectors survey about 21,760 businesses annually. Based on past experience with local wage surveys, DOD estimates that each survey collection requires 1.5 hours of respondent burden for collection forms, resulting in a total yearly burden of 32,640 hours. (See the *Paperwork Reduction Act* section below.) The changes in wage area boundaries in this rule are not expected to affect the public reporting burden of the current information collection. This is because the number of counties included in future survey areas will remain very similar to those included in current survey areas. OPM invited public comment on this matter, but no comments were submitted.

This final rule will affect the FWS employees of up to 30 Federal agencies—ranging from cabinet-level departments to small independent agencies—affecting around 17,000 FWS employees. The estimated payroll cost of this final rule, including 36.70 percent fringe benefits,[11] is approximately $150 million when annualized at a 2 percent rate, and its cumulative undiscounted 10-year cost is around $1.5 billion for geographic areas being moved from one wage area to another as a result of amending the criteria used to define FWS wage area boundaries. The total first year base payroll cost represents around 1 percent of the $10 billion overall annual base FWS payroll. About half the overall cost will be incurred by the Department of the Army, primarily at Tobyhanna, Letterkenny, and Anniston Army Depots because a substantial number of the FWS employees who will be affected by the proposed changes is concentrated at these large federal installations.

Attachment 1 [12] provides OPM's estimate of the payroll costs for the first 10 years of implementation of this rule. This document was developed by OPM staff who provide technical support to FPRAC. The cost estimate lists the wage areas that will have counties added as

[10] Local wage surveys are scheduled in advance, with surveys scheduled by regulation to begin in a certain month in each wage area. The beginning month of appropriated fund wage surveys and the fiscal year during which full-scale surveys are conducted are set out as appendix A to subpart B of part 532. Under 5 U.S.C. 5344(a), any increase in rates of basic pay is effective not later than the first day of the first pay period on or after the 45th day, excluding Saturdays and Sundays, after a survey was ordered to begin in a wage area. For example, the January wage schedule is ordered in January and becomes effective in March of each year.

[11] DOD provides annual costs for civilian personnel fringe benefits at *https://comptroller.defense.gov/Portals/45/documents/rates/fy2024/2024_d.pdf.*

[12] Attachment 1 may be found in the docket OPM–2024–0016 on *www.regulations.gov.*

a result of the final rule and identifies the counties being added.

To calculate the estimated first year cost of around $140 million, we used Wage Grade, Wage Leader, and Wage Supervisor employment numbers in each impacted county and compared the difference in pay between the grade's step-2 rate under the county's current wage schedule, the prevailing wage grade level, and the wage schedule the county will be defined under by this final rule. The overall costs were further adjusted based on the average step rate for FWS employees being above step 2.[13] The ten cells to the right of each county provide the costs for the first ten years of implementation. In the ''Totals'' worksheet, the ''Totals'' column provides the estimated total cost for the increased payroll for the first 10 years after implementation. The ''Emps'' column provides the sum of Wage Grade, Wage Leader, and Wage Supervisor employees in the county. The bottom row of each wage area section of Attachment 1 provides the total payroll costs associated with this rule for all counties being moved to the wage area listed. Estimated costs for the second through tenth years were calculated using a 2 percent adjustment factor, in line with the President's budget plan for FY 2025 and an estimated 36.7 percent fringe benefit factor. As these are only estimates, actual future costs will vary.

Future wage schedules will be based on local wage surveys that will include survey counties that were previously survey counties in wage areas with different prevailing wage levels. As such, the measurable prevailing wage levels within a wage area are likely to be different than those measured in the most recent local wage surveys. For instance, starting with new full-scale wage surveys beginning in October 2027, the proposed San Jose-San Francisco-Oakland wage area will include Monterey and San Joaquin Counties, CA, in its wage surveys. It is possible that inclusion of these counties in an enlarged San Jose-San Francisco-Oakland survey area might result in prevailing wage levels being measured at a lower level than if they were not included. However, as a result of statistical sampling methods and natural changes in wage growth across the mix of private industrial establishments that will be surveyed, it is not certain what, if any, impact will occur on wage survey results until a full-scale wage survey has been completed in the expanded wage area. It is reasonable to anticipate that adding counties with lower prevailing wage levels to a survey area with higher prevailing wage levels will result in somewhat lower wage survey findings overall and lower wage schedules. However, the floor increase provision that has been included in appropriations law each year since FY 2004 would offset that impact if the provision is continued. As long as a floor increase provision provides for a minimum annual adjustment amount for a wage schedule, the combining of counties with lower prevailing wage levels into a wage area with higher prevailing wage levels will have no impact on the payable wage rates in that wage area should the floor increase amount continue to be higher than the pay cap amount. In this scenario, the additional payroll costs that agencies would incur in Monterey and San Joaquin counties would be because employees there would be paid wage rates from the San Jose-San Francisco-Oakland wage schedule that are higher than wage rates applicable in their current wage areas.

Agency payroll providers will need to properly assign official duty station codes within their systems for impacted employees by reassigning the codes from one FWS wage schedule to another. Although around 17,000 FWS employees will be affected by these changes in wage area boundaries, there are far fewer official duty station codes that will need to be updated by the four major payroll providers in their payroll systems. OPM estimates this number of impacted official duty station codes to be around 254. This is not anticipated to be a significant additional cost burden or to require additional funding as agency payroll systems are often updated as a routine business matter as pay area boundaries change and as wage schedules are updated every year. For example, the payroll providers implemented changes in GS locality pay area affecting around 34,000 employees in January 2024. However, OPM estimates that implementing payroll changes in terms of the time required for the 254 official duty station codes across the four payroll providers at a cost of around $7,800. OPM calculated this estimate by allowing for ten minutes to manually update each duty station change in each of the four payroll systems by a mid-range payroll processing staff member with an average salary and benefits cost of around $96,000 per year, which equates to a cost of around $7.66 per change per provider. OPM invited public comment on this estimate, but no comments were received.

5. Benefits

This rule has important benefits. Employees have expressed understandable equity concerns since the mid-1990s about why there are different geographic boundaries defined for the Federal Government's two main pay systems. Over the years, Members of Congress have expressed interest in this issue and written letters in support of aligning FWS wage areas and GS locality pay areas. FPRAC heard testimony from Congressional staff, local union and management representatives, and employees in support of better aligning the geographic boundaries of FWS wage areas and GS locality pay areas, including testimony that a high rate of commuting interchange—which, for example, triggered Monroe County's reassignment from the Rest of U.S. GS locality pay area to the New York-Newark GS locality pay area in 2005—should also be reflected in the FWS wage areas. This final rule will address most of the internal equity and fairness concerns found across the country that are unnecessarily damaging to employee morale when an alternative and defensible approach is possible. This can also be accomplished at a relatively low cost of an increase in base payroll of only around 1 percent. FPRAC acknowledged that, although around 2,000 FWS employees will be placed on lower wage schedules as a result of these actions, around 1,870 of these employees will be entitled to pay retention. Accordingly, FPRAC found that the benefits to FWS employees overall outweighed the concerns regarding the limited number of positions negatively impacted.

Further, FPRAC members, agency and union representatives, and employees expressed concerns at public FPRAC meetings that the FWS no longer reflects modern compensation practices for prevailing rate tradespeople and laborers and that updating the wage area definition criteria to be more similar to the GS locality pay area criteria will be a step in the right direction to begin modernizing the prevailing rate system. Despite the projection of continuing application of the floor and pay cap provisions to the FWS wage schedules, implementation of these changes to the criteria used to define and maintain FWS wage areas, in particular adopting the use of employment interchange

[13] The step 2 rate is the prevailing wage level, or 100 percent of market, that DOD bases all the other step rates on. The average step for employees changes over time and is different from area to area and grade to grade within a wage area. Currently, the average rate is just above step 3, which is 4 percent above step 2. FPRAC has used this methodology for calculating costs for many years and has found it to be a fairly accurate predictor of cost.

measures and CSA definitions, will better position the FWS to align with regional prevailing wage practices because they better reflect current commuting, employment, and recruitment patterns.

6. Alternatives

Over the course of 15 working group meetings, at which there was extensive discussion, FPRAC considered various options to address the FWS and GS pay equity concerns expressed in the House Report language. These discussions had been taking place for many years previously without consensus. One alternative to the approach adopted in this final rule was to make no changes to the current FWS wage areas and encourage agencies to use pay flexibilities when challenged with recruitment issues. However, maintaining the status quo will not resolve employee equity concerns or address the interests expressed by Congress.

Another option considered was conducting piecemeal reviews of wage areas using the existing wage area definition criteria (distance, commuting, demographic), only when employees or other stakeholders raise concerns. This has been FPRAC's approach since 2012, but it has not addressed the fundamental inequities resulting from managing the FWS and GS with different sets of rules (*i.e.,* different criteria) for defining pay area boundaries. The current regulatory criteria were not designed to allow for changing wage area definitions absent factors such as military base closures or changes in MSAs.

FPRAC also considered adding CSA definitions alone as a criterion to the existing regulatory criteria in 5 CFR 532.211. OMB published new CSA and MSA definitions on July 21, 2023, in OMB Bulletin 23–01, and FPRAC has a practice of using new MSA definitions when they become available. The new OMB definitions and an analysis of the current FWS regulatory criteria to define wage areas did not appear to address some of the most contentious counties under FPRAC discussion as those counties still did not align with the GS locality pay areas. For example, the 2023 OMB definitions moved Monroe County, PA, from the New York-Newark, NY-NJ-CT-PA, CSA to the Allentown-Bethlehem-East Stroudsburg, PA-NJ, CSA. OMB Bulletin No. 20–01 (which FPRAC previously used) included the East Stroudsburg, PA, MSA, comprised only of Monroe County, PA, in the New York CSA. OMB Bulletin No. 23–01 supersedes the previous ones and lists Monroe County as the sole county of the East Stroudsburg, PA, micropolitan statistical area, and part of the Allentown-Bethlehem-East Stroudsburg, PA-NJ, CSA. Both Monroe County and the Allentown CSA are part of the New York locality pay area for GS employees. Based on the updated OMB Bulletin and applying the criteria in this final rule, Monroe County will be defined to a wage area consistent with the rest of the Allentown-Bethlehem-East Stroudsburg, PA-NJ, CSA. Applying employment interchange analysis to better recognize regional commuting patterns helps to clarify where best to define the Allentown-Bethlehem-East Stroudsburg, PA-NJ, CSA and results in the Allentown-Bethlehem-East Stroudsburg, PA-NJ, CSA, including Monroe County, being defined as part of the New York, Newark wage area.

The committee also considered and decided against merely adopting and applying GS locality pay area definitions to FWS wage areas. For GS locality pay purposes, pay disparities with the non-Federal sector for GS employees stationed in a locality pay area are based on data for the entire locality pay area. The FWS continues the concept of using survey areas and areas of application because FWS employees tend to be employed in greater numbers at military installations and VA Medical Centers and not throughout an entire wage area. In contrast, GS employees are widely distributed geographically at all agencies.

FPRAC's members had disparate views on how future wage schedules based on these geographic changes in wage area definitions could best reflect prevailing wage levels. One view held that combining the survey areas of two wage areas together should result in an entirely new wage schedule being applied to FWS employees in the expanded wage area. OPM determined that this method was not appropriate given that the floor increase provision in appropriations law each year requires that wage schedules be adjusted upwards by the same percentage adjustment amount received by GS employees in the area. It would also be contrary to longstanding precedent to ignore statutory pay cap and floor increase provisions when wage survey areas change. Consequently, in this rule OPM first adds counties moving between wage areas to the area of application of the gaining wage area and subsequently adds counties to survey areas for the next full-scale wage survey in the wage area.

These regulations will not immediately expand survey areas for continuing, but enlarged, wage areas. Instead, abolished wage areas will first be merged into the areas of application of continuing wage areas and subsequently added to the survey areas for the next regularly scheduled full wage surveys beginning in FY 2026, FY 2027, and FY 2028. This will provide DOD time to allocate and train appropriate additional staff, if needed. OPM invited comment on any additional alternative approaches that could be considered that are in accordance with the permanent and appropriations laws governing the development of FWS wage schedules. One labor organization suggested that changes to FWS wage areas should be automatic based on changes to GS locality pay areas. Comment 478. Another commenter supported this suggestion. Comment 497. FWS wage area changes have never been automatic and no changes in wage area boundaries have ever been made without first receiving an FPRAC recommendation. This rule will not change this practice. FWS wage area boundaries could be revised through rulemaking concurrent with changes in GS locality pay area boundaries after receiving and approving an FPRAC recommendation and with the opportunity for public input.

Procedural Issues and Regulatory Review

Regulatory Review

OPM has examined the impact of this rule as required by Executive Order 12866 (Sept. 30, 1993), as supplemented by Executive Order 13563 (Jan. 18, 2011) and amended by Executive Order 14094 (Apr. 6, 2023), which directs 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). A regulatory impact analysis must be prepared for certain rules with effects of $200 million or more in any one year. This rule does not reach that threshold but has otherwise been designated as a ''significant regulatory action'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

Regulatory Flexibility Act

The Acting Director of OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule will apply only to Federal agencies and employees.

Federalism

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Aug. 10, 1999), it is determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Civil Justice Reform

This rule meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988 (Feb. 7, 1996).

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or Tribal governments in the aggregate, or on the private sector, in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately $183 million. This rule will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*) requires rules (as defined in 5 U.S.C. 804) to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this action before its effective date, as required by 5 U.S.C. 801. OMB's Office of Information and Regulatory Affairs has determined that this rule meets the criteria in 5 U.S.C. 804(2).

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB Control Number.

OPM plans to use an existing collection, Establishment Information Form, Wage Data Collection Form, and Wage Data Collection Continuation Form approved under OMB control number 3206–0036 in association with this final rule. OPM does not believe this rule will result in a significant change to the burden, reporting, recordkeeping, and other compliance requirements as discussed in the preamble of the rule. Additional information regarding this collection—including all current background materials—can be found at Information Collection Review (*reginfo.gov*) by using the search function to enter either the title of the collection or the OMB Control Number.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

For the reasons stated in the preamble, OPM amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 is revised to read as follows:

Authority: 5 U.S.C. 5343, 5346. Sec. 532.707 also issued under 5 U.S.C. 552.

■ 2. Revise § 532.211 to read as follows

§ 532.211 Criteria for appropriated fund wage areas.

(a) Each wage area shall consist of one or more survey areas along with nonsurvey areas, if any.

(1) *Survey area.* A survey area is composed of the counties, parishes, cities, townships, or similar geographic entities in which survey data are collected. Survey areas are established and maintained where there are a minimum of 100 or more wage employees subject to a regular wage schedule and those employees are located close to concentrations of private sector employment such as found in a Combined Statistical Area or Metropolitan Statistical Area.

(2) *Nonsurvey area.* Nonsurvey counties, parishes, cities, townships, or similar geographic entities may be combined with the survey area(s) to form the wage area through consideration of criteria including local commuting patterns such as employment interchange measures, distance, transportation facilities, geographic features; similarities in overall population, employment, and the kinds and sizes of private industrial establishments; and other factors relevant to the process of determining and establishing rates of pay for wage employees at prevailing wage levels.

(b) Wage areas shall include wherever possible a recognized economic community such as a Combined Statistical Area, a Metropolitan Statistical Area, or a political unit such as a county. Two or more economic communities or political units, or both, may be combined to constitute a single wage area; however, except in unusual circumstances and as an exception to the criteria, an individually defined Combined Statistical Area, Metropolitan Statistical Area, county or similar geographic entity shall not be subdivided for the purpose of defining a wage area.

(c) Except as provided in paragraph (a) of this section, wage areas shall be established and maintained when:

(1) There is a minimum of 100 wage employees subject to the regular schedule and the lead agency indicates that a local installation has the capacity to do the survey; and

(2) There is, within a reasonable commuting distance of the concentration of Federal employment:

(i) A minimum of either 20 establishments within survey specifications having at least 50 employees each; or 10 establishments having at least 50 employees each, with a combined total of 1,500 employees; and

(ii) The total private enterprise employment in the industries surveyed in the survey area is at least twice the Federal wage employment in the survey area.

(d)(1) Adjacent economic communities or political units meeting the separate wage area criteria in paragraphs (b) and (c) of this section may be combined through consideration of local commuting patterns such as employment interchange measures, distance, transportation facilities, geographic features; similarities in overall population, employment, and the kinds and sizes of private industrial establishments; and other factors relevant to the process of determining and establishing rates of pay for wage employees at prevailing wage levels.

(2) When two wage areas are combined, the survey area of either or both may be used, depending on the concentrations of Federal and private employment and locations of establishments, the proximity of the survey areas to each other, and the extent of economic similarities or differences as indicated by relative

levels of wage rates in each of the potential survey areas.

(e) Appropriated fund wage and survey area definitions are set out as appendix C to this subpart and are incorporated in and made part of this section.

(f) A single contiguous military installation defined as a Joint Base that will otherwise overlap two separate wage areas shall be included in only a single wage area. The wage area of such a Joint Base shall be defined to be the wage area with the most favorable payline based on an analysis of the simple average of the 15 nonsupervisory second step rates on each one of the regular wage schedules applicable in the otherwise overlapped wage areas.

■ 3. Revise and republish appendix A to subpart B to read as follows:

Appendix A to Subpart B of Part 532—Nationwide Schedule of Appropriated Fund Regular Wage Surveys

This appendix shows the annual schedule of wage surveys. It lists all States alphabetically, each State being followed by an alphabetical listing of all wage areas in the State. Information given for each wage area includes—

(1) The lead agency responsible for conducting the survey;

(2) The month in which the survey will begin; and

(3) Whether full-scale surveys will be done in odd or even numbered fiscal years.

State	Wage area	Lead agency	Beginning month of survey	Fiscal year of full-scale survey odd or even
Alabama	Birmingham-Cullman-Talladega	DoD	January	Even.
	Dothan	DoD	July	Odd.
	Huntsville	DoD	April	Even.
	Montgomery-Selma	DoD	August	Odd.
Alaska	Alaska	DoD	July	Even.
Arizona	Northeastern Arizona	DoD	March	Odd.
	Phoenix	DoD	March	Odd.
	Tucson	DoD	March	Odd.
Arkansas	Little Rock	DoD	July	Even.
California	Fresno	DoD	February	Odd.
	Los Angeles	DoD	November	Odd.
	Sacramento-Roseville	DoD	February	Odd.
	San Diego	DoD	September	Odd.
	San Jose-San Francisco-Oakland	DoD	October	Even.
Colorado	Denver	DoD	January	Odd.
	Southern Colorado	DoD	January	Even.
District of Columbia	Washington-Baltimore-Arlington	DoD	July	Odd.
Florida	Cocoa Beach	DoD	October	Even.
	Jacksonville	DoD	January	Odd.
	Miami-Port St. Lucie-Fort Lauderdale	DoD	May	Odd.
	Panama City	DoD	September	Even.
	Pensacola	DoD	September	Odd.
	Tampa-St. Petersburg	DoD	April	Even.
Georgia	Albany	DoD	August	Odd.
	Atlanta	DoD	May	Odd.
	Augusta	DoD	June	Odd.
	Macon	DoD	June	Odd.
	Savannah	DoD	May	Odd.
Hawaii	Hawaii	DoD	June	Even.
Idaho	Boise	DoD	July	Odd.
Illinois	Bloomington-Pontiac	DoD	September	Odd.
	Chicago-Naperville, IL	DoD	September	Even.
Indiana	Evansville-Henderson	DoD	October	Odd.
	Fort Wayne-Marion	DoD	October	Odd.
	Indianapolis-Carmel-Muncie	DoD	October	Odd.
Iowa	Cedar Rapids-Iowa City	DoD	July	Even.
	Davenport-Moline	DoD	October	Even.
	Des Moines	DoD	September	Odd.
Kansas	Manhattan	DoD	November	Even.
	Wichita	DoD	November	Even.
Kentucky	Lexington	DoD	February	Even.
	Louisville	DoD	February	Odd.
Louisiana	Lake Charles-Alexandria	DoD	April	Even.
	New Orleans	DoD	June	Even.
	Shreveport	DoD	May	Even.
Maine	Augusta	DoD	May	Even.
	Central and Northern Maine	DoD	June	Even.
Massachusetts	Boston-Worcester-Providence	DoD	August	Even.
Michigan	Detroit-Warren-Ann Arbor	DoD	January	Odd.
	Northwestern Michigan	DoD	August	Odd.
	Southwestern Michigan	DoD	October	Even.
Minnesota	Duluth	DoD	June	Odd.
	Minneapolis-St. Paul	DoD	April	Odd.
Mississippi	Biloxi	DoD	November	Even.
	Jackson	DoD	February	Odd.
	Meridian	DoD	February	Odd.
	Northern Mississippi	DoD	February	Even.
Missouri	Kansas City	DoD	October	Odd.
	St. Louis	DoD	October	Odd.
	Southern Missouri	DoD	October	Odd.
Montana	Montana	DoD	July	Even.
Nebraska	Omaha	DoD	October	Odd.
Nevada	Las Vegas	DoD	September	Even.
	Reno	DoD	March	Even.
New Hampshire	Portsmouth	DoD	September	Even.
New Mexico	Albuquerque-Santa Fe-Los Alamos	DoD	April	Odd.
New York	Albany-Schenectady	DoD	March	Odd.
	Buffalo	DoD	September	Odd.
	New York-Newark	DoD	January	Even.
	Northern New York	DoD	March	Odd.
	Rochester	DoD	April	Even.

State	Wage area	Lead agency	Beginning month of survey	Fiscal year of full-scale survey odd or even
	Syracuse-Utica-Rome	DoD	March	Even.
North Carolina	Asheville	DoD	June	Even.
	Central North Carolina	DoD	May	Even.
	Charlotte-Concord	DoD	August	Odd.
	Southeastern North Carolina	DoD	January	Odd.
North Dakota	North Dakota	DoD	March	Even.
Ohio	Cincinnati	DoD	January	Odd.
	Cleveland-Akron-Canton	DoD	April	Odd.
	Columbus-Marion-Zanesville	DoD	January	Odd.
	Dayton	DoD	January	Even.
Oklahoma	Oklahoma City	DoD	August	Odd.
	Tulsa	DoD	August	Odd.
Oregon	Portland-Vancouver-Salem	DoD	July	Even.
	Southwestern Oregon	DoD	June	Even.
Pennsylvania	Harrisburg-York-Lebanon	DoD	May	Even.
	Philadelphia-Reading-Camden	DoD	October	Even.
	Pittsburgh	DoD	July	Odd.
	Scranton-Wilkes-Barre	DoD	August	Odd.
Puerto Rico	Puerto Rico	DoD	July	Odd.
South Carolina	Charleston	DoD	July	Even.
	Columbia	DoD	May	Even.
South Dakota	Eastern South Dakota	DoD	October	Even.
Tennessee	Eastern Tennessee	DoD	February	Odd.
	Memphis	DoD	February	Even.
	Nashville	DoD	February	Even.
Texas	Austin	DoD	June	Even.
	Corpus Christi-Kingsville-Alice	DoD	June	Even.
	Dallas-Fort Worth	DoD	October	Odd.
	El Paso	DoD	April	Even.
	Houston-Galveston-Texas City	DoD	March	Even.
	San Antonio	DoD	June	Odd.
	Texarkana	DoD	April	Odd.
	Waco	DoD	May	Odd.
	Western Texas	DoD	May	Odd.
	Wichita Falls, Texas-Southwestern Oklahoma	DoD	July	Even.
Utah	Utah	DoD	July	Odd.
Virginia	Richmond	DoD	November	Odd.
	Roanoke	DoD	November	Even.
	Virginia Beach-Chesapeake	DoD	May	Even.
Washington	Seattle-Everett	DoD	September	Even.
	Southeastern Washington- Eastern Oregon	DoD	June	Odd.
	Spokane	DoD	July	Odd.
West Virginia	West Virginia	DoD	March	Odd.
Wisconsin	Madison	DoD	July	Even.
	Milwaukee-Racine-Waukesha	DoD	June	Odd.
	Southwestern Wisconsin	DoD	June	Even.
Wyoming	Wyoming	DoD	January	Even.

■ 4. Revise and republish appendix C to subpart B to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

This appendix lists the wage area definitions for appropriated fund employees. With a few exceptions, each area is defined in terms of county units, independent cities, or a similar geographic entity. Each wage area definition consists of:

(1) Wage area title. Wage areas usually carry the title of the principal city in the area. Sometimes, however, the area title reflects a broader geographic area, such as Combined Statistical Area or Metropolitan Statistical Area.

(2) Survey area definition. Lists each county, independent city, or a similar geographic entity in the survey area.

(3) Area of application definition. Lists each county, independent city, or a similar geographic entity which, in addition to the survey area, is in the area of application.

Definitions of Wage Areas and Wage Area Survey Areas

ALABAMA

Birmingham-Cullman-Talladega

Survey Area

Alabama:
- Calhoun (effective for wage surveys beginning in January 2028)
- Etowah (effective for wage surveys beginning in January 2028)
- Jefferson
- St. Clair
- Shelby
- Talladega (effective for wage surveys beginning in January 2028)
- Tuscaloosa
- Walker

Area of Application. Survey area plus:

Alabama:
- Bibb
- Blount
- Calhoun (effective until January 2028)
- Chilton
- Clay
- Coosa
- Cullman
- Etowah (effective until January 2028)
- Fayette
- Greene
- Hale
- Lamar
- Marengo
- Perry
- Pickens
- Talladega (effective January 2028)

Winston

Dothan

Survey Area

Alabama:
Dale
Houston
Georgia:
Early

Area of Application. Survey area plus:

Alabama:
Barbour
Coffee
Geneva
Henry
Georgia:
Clay
Miller
Seminole

Huntsville

Survey Area

Alabama:
Limestone
Madison
Marshall
Morgan

Area of Application. Survey area plus:

Alabama
Colbert
DeKalb
Franklin
Lauderdale
Lawrence
Marion
Tennessee
Giles
Lincoln
Wayne

Montgomery-Selma

Survey Area

Alabama
Autauga
Elmore
Montgomery

Area of Application. Survey area plus:

Alabama
Bullock
Butler
Crenshaw
Dallas
Lowndes
Pike
Wilcox

ALASKA

Anchorage

Survey Area

Alaska: (boroughs and the areas within a 24-kilometer (15-mile) radius of their corporate city limits)
Anchorage
Fairbanks
Juneau

Area of Application. Survey area plus:

Alaska:
State of Alaska (except special area schedules)

ARIZONA

Northeastern Arizona

Survey Area

Arizona:
Apache
Coconino
Navajo
New Mexico:
San Juan

Area of Application. Survey area plus:

Colorado:
Dolores
Gunnison (Only includes the Curecanti National Recreation Area portion)
La Plata
Montezuma
Montrose
Ouray
San Juan
San Miguel
Utah:
Garfield (Only includes the Bryce Canyon, Capitol Reef, and Canyonlands National Parks portions)
Grand (Only includes the Arches and Canyonlands National Parks portions)
Iron (Only includes the Cedar Breaks National Monument and Zion National Park portions)
Kane
San Juan
Washington
Wayne (Only includes the Capitol Reef and Canyonlands National Parks portions)

Phoenix

Survey Area

Arizona:
Gila
Maricopa

Area of Application. Survey area plus:

Arizona:
Pinal
Yavapai

Tucson

Survey Area

Arizona:
Pima

Area of Application. Survey area plus:

Arizona:
Cochise
Graham
Greenlee
Santa Cruz

ARKANSAS

Little Rock

Survey Area

Arkansas:
Jefferson
Pulaski
Saline

Area of Application. Survey area plus:

Arkansas:
Arkansas
Ashley
Baxter
Boone
Bradley
Calhoun
Chicot
Clark
Clay
Cleburne
Cleveland
Conway
Dallas
Desha
Drew
Faulkner
Franklin (Does not include the Fort Chaffee portion)
Fulton
Garland
Grant
Greene
Hot Spring
Independence
Izard
Jackson
Johnson
Lawrence
Lincoln
Logan
Lonoke
Marion
Monroe
Montgomery
Newton
Ouachita
Perry
Phillips
Pike
Polk
Pope
Prairie
Randolph
Scott
Searcy
Sharp
Stone
Union
Van Buren
White
Woodruff
Yell

CALIFORNIA

Fresno

Survey Area

California:
Fresno
Kings
Tulare

Area of Application. Survey area plus:

California:
Madera
Mariposa
Tuolumne (Only includes the Yosemite National Park portion)

Los Angeles

Survey Area

California:
Kern (effective for wage surveys beginning in November 2026)
Los Angeles
Orange (effective for wage surveys beginning in November 2026)
Riverside (effective for wage surveys beginning in November 2026)
San Bernardino (effective for wage surveys beginning in November 2026)

Santa Barbara (effective for wage surveys beginning in November 2026)
Ventura (effective for wage surveys beginning in November 2026)

Area of Application. Survey area plus:

California:
Inyo (Only includes the China Lake Naval Weapons Center portion)
Kern (effective until November 2026)
Orange (effective until November 2026)
Riverside (effective until November 2026)
San Bernardino (effective until November 2026)
Santa Barbara (effective until November 2026)
San Luis Obispo
Ventura (effective until November 2026)

Sacramento-Roseville

Survey Area

California:
Placer
Sacramento
Sutter
Yolo
Yuba

Area of Application. Survey area plus:

California:
Amador
Butte
Colusa
El Dorado
Glenn
Humboldt
Lake
Modoc
Nevada
Plumas
Shasta
Sierra
Siskiyou
Tehama
Trinity

San Diego

Survey Area

California:
San Diego
Arizona:
Yuma (effective for wage surveys beginning in September 2027)

Area of Application. Survey area plus:

Arizona:
La Paz
Yuma (effective until September 2027)
California:
Imperial

San Jose-San Francisco-Oakland

Survey Area

California:
Alameda
Contra Costa
Marin
Monterey (effective for wage surveys beginning in October 2027)
Napa
San Joaquin (effective for wage surveys beginning in October 2027)
San Francisco
San Mateo
Santa Clara
Solano

Area of Application. Survey area plus:

California:
Calaveras
Mendocino
Merced
Monterey (effective until October 2027)
San Benito
San Joaquin (effective until October 2027)
Santa Cruz
Sonoma
Stanislaus
Tuolumne (Does not include the Yosemite National Park portion)

COLORADO

Denver

Survey Area

Colorado:
Adams
Arapahoe
Boulder
Broomfield
Denver
Douglas
Gilpin
Jefferson

Area of Application. Survey area plus:

Colorado:
Clear Creek
Eagle
Elbert
Garfield
Grand
Jackson
Lake
Larimer
Lincoln
Logan
Morgan
Park
Phillips
Pitkin
Rio Blanco
Routt
Sedgwick
Summit
Washington
Weld
Yuma

Southern Colorado

Survey Area

Colorado:
El Paso
Pueblo
Teller

Area of Application. Survey area plus:

Colorado:
Alamosa
Archuleta
Baca
Bent
Chaffee
Cheyenne
Conejos
Costilla
Crowley
Custer
Delta
Fremont
Gunnison (does not includes the Curecanti National Recreation Area portion)
Hinsdale
Huerfano
Kiowa
Kit Carson
Las Animas
Mineral
Otero
Prowers
Rio Grande
Saguache

CONNECTICUT

New Haven-Hartford

Survey Area

Connecticut:
Hartford
New Haven
New London (effective for wage surveys beginning in April 2027)
Massachusetts:
Hampden (effective for wage surveys beginning in April 2027)
Hampshire (effective for wage surveys beginning in April 2027)

Area of Application. Survey area plus:

Connecticut:
Litchfield
Middlesex
New London (effective until April 2027)
Tolland
Windham
Massachusetts:
Franklin
Hampden (effective until April 2027)
Hampshire (effective until April 2027)

DISTRICT OF COLUMBIA

Washington-Baltimore-Arlington

Survey Area

District of Columbia:
Washington, DC
Maryland (city):
Baltimore (effective for wage surveys beginning in July 2027)
Maryland (counties):
Anne Arundel (effective for wage surveys beginning in July 2027)
Baltimore (effective for wage surveys beginning in July 2027)
Carroll (effective for wage surveys beginning in July 2027)
Charles
Frederick
Harford (effective for wage surveys beginning in July 2027)
Howard (effective for wage surveys beginning in July 2027)
Montgomery
Prince George's
Washington (effective for wage surveys beginning in July 2027)
Pennsylvania:
Franklin (effective for wage surveys beginning in July 2027)
Virginia (cities):
Alexandria
Fairfax
Falls Church
Manassas
Manassas Park
Virginia (counties):
Arlington
Fairfax

King George (effective for wage surveys beginning in July 2027)
Loudoun
Prince William
West Virginia:
Berkley (effective for wage surveys beginning in July 2027)

Area of Application. Survey area plus:

Maryland (city):
Baltimore (effective until July 2027)
Maryland (counties)
Allegany
Anne Arundel (effective until July 2027)
Baltimore (effective until July 2027)
Calvert
Caroline
Carroll (effective until July 2027)
Dorchester
Garrett
Harford (effective until July 2027)
Howard (effective until July 2027)
Kent
Queen Anne's
St. Mary's
Talbot
Washington (effective until July 2027)
Pennsylvania:
Franklin (effective until July 2027)
Fulton
Virginia (cities):
Fredericksburg
Harrisonburg
Staunton
Waynesboro
Winchester
Virginia (counties):
Albemarle (Only includes the Shenandoah National Park portion)
Augusta
Caroline
Clarke
Culpeper
Fauquier
Frederick
Greene (Only includes the Shenandoah National Park portion)
King George (effective until July 2027)
Madison
Orange
Page
Rappahannock
Rockingham
Shenandoah
Spotsylvania
Stafford
Warren
Westmoreland
West Virginia:
Berkeley (effective until July 2027)
Hampshire
Hardy
Jefferson
Mineral
Morgan

FLORIDA

Cocoa-Beach

Survey Area

Florida:
Brevard

Area of Application. Survey area.

Jacksonville

Survey Area

Florida:
Alachua
Baker
Clay
Columbia (effective for wage surveys beginning in January 2027)
Duval
Nassau
Orange (effective for wage surveys beginning in January 2027)
St. Johns
Sumter (effective for wage surveys beginning in January 2027)
Georgia:
Camden

Area of Application. Survey area plus:

Florida:
Bradford
Citrus
Columbia (effective until January 2027)
Dixie
Flagler
Gilchrist
Hamilton
Lafayette
Lake
Levy
Madison
Marion
Orange (effective until January 2027)
Osceola
Polk
Putnam
Seminole
Sumter (effective until January 2027)
Suwannee
Taylor
Union
Volusia
Georgia:
Charlton

Miami-Port St. Lucie-Fort Lauderdale

Survey Area

Florida:
Miami-Dade
Palm Beach (effective for wage surveys beginning in May 2027)

Area of Application. Survey area plus:

Florida:
Broward
Collier
Glades
Hendry
Highlands
Indian River
Lee
Martin
Monroe
Okeechobee
Palm Beach (effective until May 2027)

St. Lucie

Area of Application. Survey area.

Panama City

Survey Area

Florida:
Bay
Gulf

Area of Application. Survey area plus:

Florida:
Calhoun
Franklin
Gadsden
Holmes
Jackson
Jefferson
Leon
Liberty
Wakulla
Washington
Georgia:
Decatur

Pensacola

Survey Area

Florida:
Escambia
Santa Rosa

Area of Application. Survey area plus:

Alabama:
Baldwin
Clarke
Conecuh
Covington
Escambia
Mobile
Monroe
Washington
Florida:
Okaloosa
Walton

Tampa-St. Petersburg

Survey Area

Florida:
Hillsborough
Pasco
Pinellas

Area of Application. Survey area plus:

Florida:
Charlotte
De Soto
Hardee
Hernando
Manatee
Sarasota

GEORGIA

Albany

Survey Area

Georgia:
Colquitt
Dougherty
Lee
Mitchell
Worth

Area of Application. Survey area plus:

Georgia:
Atkinson
Baker
Ben Hill
Berrien
Brooks
Calhoun
Clinch
Coffee
Cook
Echols

Grady
Irwin
Lanier
Lowndes
Quitman
Randolph
Schley
Sumter
Terrell
Thomas
Tift
Turner
Ware
Webster

Atlanta

Survey Area

Alabama:
Lee (effective for wage surveys beginning in May 2027)
Macon (effective for wage surveys beginning in May 2027)
Russell (effective for wage surveys beginning in May 2027)
Georgia:
Butts
Chattahoochee (effective for wage surveys beginning in May 2027)
Cherokee
Clayton
Cobb
De Kalb
Douglas
Fayette
Forsyth
Fulton
Gwinnett
Henry
Muscogee (effective for wage surveys beginning in May 2027)
Newton
Paulding
Rockdale
Walton

Area of Application. Survey area plus:

Alabama:
Chambers
Cherokee
Cleburne
Lee (effective until May 2027)
Macon (effective until May 2027)
Randolph
Russell (effective until May 2027)
Tallapoosa
Georgia:
Banks
Barrow
Bartow
Carroll
Chattahoochee (effective until May 2027)
Clarke
Coweta
Dawson
Elbert
Fannin
Floyd
Franklin
Gilmer
Gordon
Greene
Habersham
Hall
Haralson
Harris
Hart
Heard
Jackson
Jasper
Lamar
Lumpkin
Madison
Marion
Meriwether
Morgan
Muscogee (effective until May 2027)
Oconee
Oglethorpe
Pickens
Pike
Polk
Putnam
Rabun
Spalding
Stephens
Stewart
Talbot
Taliaferro
Towns
Troup
Union
Upson
White

Augusta

Survey Area

Georgia:
Columbia
McDuffie
Richmond
South Carolina:
Aiken

Area of Application. Survey area plus:

Georgia:
Burke
Emanuel
Glascock
Jefferson
Jenkins
Lincoln
Warren
Wilkes
South Carolina:
Allendale
Bamberg
Barnwell
Edgefield
McCormick

Macon

Survey Area

Georgia:
Bibb
Houston
Jones
Laurens
Twiggs
Wilkinson

Area of Application. Survey area plus:

Georgia:
Baldwin
Bleckley
Crawford
Crisp
Dodge
Dooly
Hancock
Johnson
Macon
Monroe
Montgomery
Peach
Pulaski
Taylor
Telfair
Treutlen
Washington
Wheeler
Wilcox

Savannah

Survey Area

Georgia:
Bryan
Chatham
Effingham
Liberty
South Carolina:
Beaufort (effective for wage surveys beginning in May 2027)

Area of Application. Survey area plus:

Georgia:
Appling
Bacon
Brantley
Bulloch
Candler
Evans
Glynn
Jeff Davis
Long
McIntosh
Pierce
Screven
Tattnall
Toombs
Wayne
South Carolina:
Beaufort (effective until May 2027)
Hampton
Jasper

HAWAII

Hawaii

Survey Area

Hawaii:
Honolulu

Area of Application. Survey area plus:

Hawaii:
Hawaii
Kauai (includes the islands of Kauai and Niihau)
Maui (includes the islands of Maui, Molokai, Lanai, and Kahoolawe)

IDAHO

Boise

Survey Area

Idaho:
Ada
Boise
Canyon
Elmore
Gem

Area of Application. Survey area plus:

Idaho:
Adams
Bannock
Bear Lake
Bingham
Blaine

Bonneville
Butte
Camas
Caribou
Cassia
Clark
Custer
Fremont
Gooding
Jefferson
Jerome
Lemhi
Lincoln
Madison
Minidoka
Oneida
Owyhee
Payette
Power
Teton
Twin Falls
Valley
Washington

ILLINOIS

Bloomington-Pontiac

Survey Area

Illinois:
Champaign
Menard
Sangamon
Vermilion

Area of Application. Survey area plus:

Illinois:
Christian
Clark
Coles
Crawford
Cumberland
De Witt
Douglas
Edgar
Ford
Jasper
Livingston
Logan
McLean
Macon
Morgan
Moultrie
Piatt
Scott
Shelby

Chicago-Naperville, IL

Survey Area

Illinois:
Cook
Du Page
Kane
Lake
McHenry
Will

Area of Application. Survey area plus:

Illinois:
Boone
Bureau
De Kalb
Grundy
Iroquois
Kankakee
Kendall
La Salle
Ogle
Putnam
Stephenson
Winnebago
Indiana:
Jasper
Lake
La Porte
Newton
Porter
Pulaski
Starke
Wisconsin:
Kenosha

INDIANA

Evansville-Henderson

Survey Area

Indiana:
Daviess
Greene
Knox
Martin
Orange

Area of Application. Survey area plus:

Illinois:
Edwards
Gallatin
Hardin
Lawrence
Richland
Wabash
White
Indiana:
Crawford
Dubois
Gibson
Perry
Pike
Posey
Spencer
Vanderburgh
Warrick
Kentucky:
Crittenden
Daviess
Hancock
Henderson
McLean
Ohio
Union
Webster

Fort Wayne-Marion

Survey Area

Indiana:
Adams
Allen
DeKalb
Huntington
Wells

Area of Application. Survey area plus:

Indiana:
Cass
Elkhart
Fulton
Jay
Kosciusko
LaGrange
Marshall
Noble
St. Joseph
Steuben
Wabash
Whitley
Ohio:
Defiance
Henry
Paulding
Putnam
Williams

Indianapolis-Carmel-Muncie

Survey Area

Indiana:
Boone
Grant (effective for wage surveys beginning in October 2026)
Hamilton
Hancock
Hendricks
Johnson
Lawrence (effective for wage surveys beginning in October 2026)
Marion
Miami (effective for wage surveys beginning in October 2026)
Monroe (effective for wage surveys beginning in October 2026)
Morgan
Shelby
Vigo (effective for wage surveys beginning in October 2026)

Area of Application. Survey area plus:

Indiana:
Bartholomew
Benton
Blackford
Brown
Carroll
Clay
Clinton
Decatur
Delaware
Fayette
Fountain
Grant (effective until October 2026)
Henry
Howard
Jackson
Jennings
Lawrence (effective until October 2026)
Madison
Miami (effective until October 2026)
Monroe (effective until October 2026)
Montgomery
Owen
Parke
Putnam
Randolph
Rush
Sullivan
Tippecanoe
Tipton
Vermillion
Vigo (effective until October 2026)
Warren
Wayne
White

IOWA

Cedar Rapids-Iowa City

Survey Area

Iowa:
Benton
Black Hawk
Johnson

Linn

Area of Application. Survey area plus:

Iowa:
Allamakee
Bremer
Buchanan
Butler
Cedar
Chickasaw
Clayton
Davis
Delaware
Fayette
Floyd
Grundy
Henry
Howard
Iowa
Jefferson
Jones
Keokuk
Mitchell
Tama
Van Buren
Wapello
Washington
Winneshiek

Davenport-Moline

Survey Area

Illinois:
Henry
Rock Island
Iowa:
Scott

Area of Application. Survey area plus:

Illinois:
Brown
Carroll
Cass
Fulton
Hancock
Henderson
Jo Daviess
Knox
Lee
McDonough
Marshall
Mason
Mercer
Peoria
Schuyler
Stark
Tazewell
Warren
Whiteside
Woodford
Iowa:
Clinton
Des Moines
Dubuque
Jackson
Lee
Louisa
Muscatine

Des Moines

Survey Area

Iowa:
Polk
Story
Warren

Area of Application. Survey area plus:

Iowa:
Adair
Appanoose
Boone
Calhoun
Carroll
Cerro Gordo
Clarke
Dallas
Decatur
Franklin
Greene
Guthrie
Hamilton
Hancock
Hardin
Humboldt
Jasper
Kossuth
Lucas
Madison
Mahaska
Marion
Marshall
Monroe
Poweshiek
Ringgold
Union
Wayne
Webster
Winnebago
Worth
Wright

KANSAS

Manhattan

Survey Area

Kansas:
Geary
Riley (effective for wage surveys beginning in November 2027)

Area of Application. Survey area plus:

Kansas:
Brown
Clay
Cloud
Coffey
Dickinson
Lyon
Marshall
Morris
Nemaha
Ottawa
Pottawatomie
Republic
Riley (effective until November 2027)
Saline
Washington

Wichita

Survey Area

Kansas:
Butler
Sedgwick

Area of Application. Survey area plus:

Kansas:
Barber
Barton
Chase
Chautauqua
Cheyenne
Clark
Comanche
Cowley
Decatur
Edwards
Elk
Ellis
Ellsworth
Finney
Ford
Gove
Graham
Grant
Gray
Greeley
Greenwood
Hamilton
Harper
Harvey
Haskell
Hodgeman
Jewell
Kearny
Kingman
Kiowa
Labette
Lane
Lincoln
Logan
McPherson
Marion
Meade
Mitchell
Montgomery
Morton
Neosho
Ness
Norton
Osborne
Pawnee
Phillips
Pratt
Rawlins
Reno
Rice
Rooks
Rush
Russell
Scott
Seward
Sheridan
Sherman
Smith
Stafford
Stanton
Stevens
Sumner
Thomas
Trego
Wallace
Wichita
Wilson
Woodson

KENTUCKY

Lexington

Survey Area

Kentucky:
Bourbon
Clark
Fayette
Jessamine
Madison
Scott
Woodford

Area of Application. Survey area plus:

Kentucky:
Anderson
Bath
Bell
Boyle
Breathitt
Casey
Clay
Estill
Fleming
Franklin
Garrard
Green
Harrison
Jackson
Knott
Knox
Laurel
Lee
Leslie
Lincoln
McCreary
Marion
Menifee
Mercer
Montgomery
Morgan
Nicholas
Owsley
Perry
Powell
Pulaski
Rockcastle
Rowan
Taylor
Washington
Wayne
Whitley
Wolfe

Louisville

Survey Area

Indiana:
Clark
Floyd
Jefferson
Kentucky:
Bullitt
Hardin
Jefferson
Oldham

Area of Application. Survey area plus:

Indiana:
Harrison
Scott
Washington
Kentucky:
Breckinridge
Grayson
Hart
Henry
Larue
Meade
Nelson
Shelby
Spencer
Trimble

LOUISIANA

Lake Charles-Alexandria

Survey Area

Louisiana:
Allen
Beauregard
Calcasieu
Grant
Rapides
Sabine
Vernon

Area of Application. Survey area plus:

Louisiana:
Acadia
Avoyelles
Caldwell
Cameron
Catahoula
Concordia
Evangeline
Franklin
Iberia
Jefferson Davis
Lafayette
La Salle
Madison
Natchitoches
St. Landry
St. Martin
Tensas
Vermilion
Winn

New Orleans

Survey Area

Louisiana:
Jefferson
Orleans
Plaquemines
St. Bernard
St. Charles
St. John the Baptist
St. Tammany

Area of Application. Survey area plus:

Louisiana:
Ascension
Assumption
East Baton Rouge
East Feliciana
Iberville
Lafourche
Livingston
Pointe Coupee
St. Helena
St. James
St. Mary
Tangipahoa
Terrebonne
Washington
West Baton Rouge
West Feliciana

Shreveport

Survey Area

Louisiana:
Bossier
Caddo
Webster

Area of Application. Survey area plus:

Louisiana:
Bienville
Claiborne
De Soto
East Carroll
Jackson
Lincoln
Morehouse
Ouachita
Red River
Richland
Union
West Carroll
Texas:
Gregg
Harrison
Panola
Rusk
Upshur

MAINE

Augusta

Survey Area

Maine:
Kennebec
Knox
Lincoln

Area of Application. Survey area:

Central And Northern Maine

Survey Area

Maine:
Aroostook
Penobscot

Area of Application. Survey area plus:

Maine:
Hancock
Piscataquis
Somerset
Waldo
Washington

MASSACHUSETTS

Boston-Worcester-Providence

Survey Area

Maine:
Androscoggin (effective for wage surveys beginning in August 2026)
Cumberland (effective for wage surveys beginning in August 2026)
Sagadahoc (effective for wage surveys beginning in August 2026)
York (effective for wage surveys beginning in August 2026)
Massachusetts:
Barnstable
Bristol (effective for wage surveys beginning in August 2026)
Essex
Middlesex
Norfolk
Plymouth
Suffolk
Worcester (effective for wage surveys beginning in August 2026)
New Hampshire:
Rockingham (effective for wage surveys beginning in August 2026)
Strafford (effective for wage surveys beginning in August 2026)
Rhode Island:
Bristol (effective for wage surveys beginning in August 2026)
Kent (effective for wage surveys beginning in August 2026)
Newport (effective for wage surveys beginning in August 2026)
Providence (effective for wage surveys beginning in August 2026)
Washington (effective for wage surveys beginning in August 2026)

Area of Application. Survey area plus:

Maine:
Androscoggin (effective until August 2026)
Cumberland (effective until August 2026)
Franklin
Oxford
Sagadahoc (effective until August 2026)
York (effective until August 2026)
Massachusetts:
Bristol (effective until August 2026)
Dukes
Nantucket
Worcester (effective until August 2026)
New Hampshire:
Belknap
Carroll
Cheshire
Coos
Grafton
Hillsborough
Merrimack
Rockingham (effective until August 2026)
Strafford (effective until August 2026)
Sullivan
Rhode Island:
Bristol (effective until August 2026)
Kent (effective until August 2026)
Newport (effective until August 2026)
Providence (effective until August 2026)
Washington (effective until August 2026)
Vermont:
Orange
Windham
Windsor

MICHIGAN

Detroit-Warren-Ann Arbor

Survey Area

Michigan:
Lapeer
Livingston
Macomb
Oakland
St. Clair
Washtenaw (effective for wage surveys beginning in January 2027)
Wayne
Ohio:
Lucas (effective for wage surveys beginning in January 2027)

Area of Application. Survey area plus:

Michigan:
Arenac
Bay
Clare
Clinton
Eaton
Genesee
Gladwin
Gratiot
Huron
Ingham
Isabella
Jackson
Lenawee
Midland
Monroe
Saginaw
Sanilac
Shiawassee
Tuscola
Washtenaw (effective until January 2027)
Ohio:
Fulton
Lucas (effective until January 2027)
Wood

Northwestern Michigan

Survey Area

Michigan:
Delta
Dickinson
Marquette

Area of Application. Survey area plus:

Michigan:
Alcona
Alger
Alpena
Antrim
Baraga
Benzie
Charlevoix
Cheboygan
Chippewa
Crawford
Emmet
Gogebic
Grand Traverse
Houghton
Iosco
Iron
Kalkaska
Keweenaw
Leelanau
Luce
Mackinac
Manistee
Menominee
Missaukee
Montmorency
Ogemaw
Ontonagon
Oscoda
Otsego
Presque Isle
Roscommon
Schoolcraft
Wexford
Wisconsin:
Florence
Marinette

Southwestern Michigan

Survey Area

Michigan:
Barry
Calhoun
Kalamazoo
Van Buren

Area of Application. Survey area plus:

Michigan:
Allegan
Berrien
Branch
Cass
Hillsdale
Ionia
Kent
Lake
Mason
Mecosta
Montcalm
Muskegon
Newaygo
Oceana
Osceola
Ottawa
St. Joseph

MINNESOTA

Duluth

Survey Area

Minnesota:
Carlton
St. Louis
Wisconsin:
Douglas

Area of Application. Survey area plus:

Minnesota:
Aitkin
Becker (only includes the White Earth Indian Reservation portion)
Beltrami
Cass
Clearwater
Cook
Crow Wing
Hubbard
Itasca
Koochiching
Lake
Lake of the Woods
Mahnomen
Wisconsin:
Ashland
Bayfield
Burnett
Iron
Sawyer
Washburn

Minneapolis-St. Paul

Survey Area

Minnesota:
Anoka
Carver
Chisago
Dakota
Hennepin
Morrison (effective for wage surveys beginning in April 2027)
Ramsey
Scott
Stearns (effective for wage surveys beginning in April 2027)
Washington
Wright
Wisconsin:
St. Croix

Area of Application. Survey area plus:

Minnesota:
Benton
Big Stone
Blue Earth
Brown
Chippewa
Cottonwood
Dodge
Douglas
Faribault
Fillmore
Freeborn
Goodhue
Grant
Isanti
Kanabec
Kandiyohi
Lac Qui Parle
Le Sueur
McLeod
Martin
Meeker

Mille Lacs
Morrison (effective until April 2027)
Mower
Nicollet
Olmsted
Pine
Pope
Redwood
Renville
Rice
Sherburne
Sibley
Stearns (effective until April 2027)
Steele
Stevens
Swift
Todd
Traverse
Wabasha
Wadena
Waseca
Watonwan
Winona
Yellow Medicine
Wisconsin:
Pierce
Polk

MISSISSIPPI

Biloxi

Survey Area

Mississippi:
Hancock
Harrison
Jackson

Area of Application. Survey area plus:

Mississippi:
George
Pearl River
Stone

Jackson

Survey Area

Mississippi:
Hinds
Rankin
Warren

Area of Application. Survey area plus:

Mississippi:
Adams
Amite
Attala
Claiborne
Copiah
Franklin
Holmes
Humphreys
Issaquena
Jefferson
Jefferson Davis
Lawrence
Lincoln
Madison
Marion
Pike
Scott
Sharkey
Simpson
Smith
Walthall
Wilkinson
Yazoo

Meridian

Survey Area

Alabama:
Choctaw
Mississippi:
Forrest
Lamar
Lauderdale

Area of Application. Survey area plus:

Alabama:
Sumter
Mississippi:
Clarke
Covington
Greene
Jasper
Jones
Kemper
Leake
Neshoba
Newton
Perry
Wayne

Northern Mississippi

Survey area

Mississippi:
Clay
Grenada
Lee
Leflore
Lowndes
Monroe
Oktibbeha

Area of Application. Survey area plus:

Mississippi:
Alcorn
Bolivar
Calhoun
Carroll
Chickasaw
Choctaw
Coahoma
Itawamba
Lafayette (Does not include the Holly Springs National Forest portion)
Montgomery
Noxubee
Pontotoc (Does not include the Holly Springs National Forest portion)
Prentiss
Quitman
Sunflower
Tallahatchie
Tishomingo
Union (Does not include the Holly Springs National Forest portion)
Washington
Webster
Winston
Yalobusha

MISSOURI

Kansas City

Survey Area

Kansas:
Jefferson (effective for wage surveys beginning in October 2026)
Johnson
Leavenworth
Osage (effective for wage surveys beginning in October 2026)
Shawnee (effective for wage surveys beginning in October 2026)
Wyandotte
Missouri:
Cass
Clay
Jackson
Johnson (effective for wage surveys beginning in October 2026)
Platte
Ray

Area of Application. Survey area plus:

Kansas:
Allen
Anderson
Atchison
Bourbon
Doniphan
Douglas
Franklin
Jackson
Jefferson (effective until October 2026)
Linn
Miami
Osage (effective until October 2026)
Shawnee (effective until October 2026)
Wabaunsee
Missouri:
Adair
Andrew
Atchison
Bates
Buchanan
Caldwell
Carroll
Chariton
Clinton
Daviess
DeKalb
Gentry
Grundy
Harrison
Henry
Holt
Johnson (effective until October 2026)
Lafayette
Linn
Livingston
Macon
Mercer
Nodaway
Pettis
Putnam
Saline
Schuyler
Sullivan
Worth

St. Louis

Survey Area

Illinois:
Clinton
Madison
Monroe
St. Clair
Williamson (effective for wage surveys beginning in October 2026)
Missouri (city):
St. Louis
Missouri (counties):
Boone (effective for wage surveys beginning in October 2026)
Franklin
Jefferson
St. Charles

St. Louis

Area of Application. Survey area plus:

Illinois:
Adams
Alexander
Bond
Calhoun
Clay
Effingham
Fayette
Franklin
Greene
Hamilton
Jackson
Jefferson
Jersey
Johnson
Macoupin
Marion
Montgomery
Perry
Pike
Pope
Pulaski
Randolph
Saline
Union
Washington
Wayne
Williamson (effective until October 2026)
Missouri:
Audrain
Bollinger
Boone (effective until October 2026)
Callaway
Cape Girardeau
Clark
Cole
Cooper
Crawford
Gasconade
Howard
Iron
Knox
Lewis
Lincoln
Madison
Marion
Mississippi
Moniteau
Monroe
Montgomery
Osage
Perry
Pike
Ralls
Randolph
St. Francois
Ste. Genevieve
Scotland
Scott
Shelby
Warren
Washington

Southern Missouri

Survey Area

Missouri:
Christian
Greene
Laclede
Phelps
Pulaski
Webster

Area of Application. Survey area plus:

Kansas:
Cherokee
Crawford
Missouri:
Barry
Barton
Benton
Butler
Camden
Carter
Cedar
Dade
Dallas
Dent
Douglas
Hickory
Howell
Jasper
Lawrence
Maries
Miller
Morgan
New Madrid
Newton
Oregon
Ozark
Polk
Reynolds
Ripley
St. Clair
Shannon
Stoddard
Stone
Taney
Texas
Vernon
Wayne
Wright

MONTANA

Montana

Survey Area

Montana:
Cascade
Lewis and Clark
Yellowstone

Area of Applicaton. Survey area plus:

Montana:
Beaverhead
Big Horn
Blaine
Broadwater
Carbon
Carter
Chouteau
Custer
Daniels
Dawson
Deer Lodge
Fallon
Fergus
Flathead
Gallatin
Garfield
Glacier
Golden Valley
Granite
Hill
Jefferson
Judith Basin
Lake
Liberty
Lincoln
McCone
Madison
Meagher
Mineral
Missoula
Musselshell
Park
Petroleum
Phillips
Pondera
Powder River
Powell
Prairie
Ravalli
Richland
Roosevelt
Rosebud
Sanders
Sheridan
Silver Bow
Stillwater
Sweet Grass
Teton
Toole
Treasure
Valley
Wheatland
Wibaux
Wyoming:
Big Horn
Park
Teton

NEBRASKA

Omaha

Survey Area

Iowa:
Pottawattamie
Nebraska:
Douglas
Lancaster
Sarpy

Area of Applicaton. Survey area plus:

Iowa:
Adams
Audubon
Buena Vista
Cass
Cherokee
Clay
Crawford
Fremont
Harrison
Ida
Mills
Monona
Montgomery
O'Brien
Page
Palo Alto
Plymouth
Pocahontas
Sac
Shelby
Sioux
Taylor
Woodbury
Nebraska:
Adams
Antelope
Arthur
Blaine
Boone
Boyd

Brown
Buffalo
Burt
Butler
Cass
Cedar
Chase
Cherry
Clay
Colfax
Cuming
Custer
Dakota
Dawson
Dixon
Dodge
Dundy
Fillmore
Franklin
Frontier
Furnas
Gage
Garfield
Gosper
Grant
Greeley
Hall
Hamilton
Harlan
Hayes
Hitchcock
Holt
Hooker
Howard
Jefferson
Johnson
Kearney
Keith
Keya Paha
Knox
Lincoln
Logan
Loup
McPherson
Madison
Merrick
Nance
Nemaha
Nuckolls
Otoe
Pawnee
Perkins
Phelps
Pierce
Platte
Polk
Red Willow
Richardson
Rock
Saline
Saunders
Seward
Sherman
Stanton
Thayer
Thomas
Thurston
Valley
Washington
Wayne
Webster
Wheeler
York
South Dakota:
Union

NEVADA

Las Vegas

Survey Area

Nevada:
Clark
Nye

Area of Applicaton. Survey area plus:

Arizona:
Mohave
California:
Inyo (Does not include the China Lake Naval Weapons Center portion.)
Nevada:
Esmeralda
Lincoln

Reno

Survey Area

California:
Lassen (effective for wage surveys beginning in March 2026)
Nevada:
Lyon
Mineral
Storey
Washoe

Area of Applicaton. Survey area plus:

California:
Alpine
Lassen (effective until March 2026)
Mono (Does not cover locations where the Bridgeport, CA, special schedule applies)
Nevada (city):
Carson City
Nevada (county):
Churchill
Douglas
Elko
Eureka
Humboldt
Lander
Pershing
White Pine

NEW MEXICO

Albuquerque-Santa Fe-Los Alamos

Survey Area

New Mexico:
Bernalillo
McKinley (effective for wage surveys beginning in April 2027)
Sandoval

Area of Application. Survey area plus:

New Mexico:
Catron
Cibola
Colfax
Curry
De Baca
Guadalupe
Harding
Lincoln (Does not include the White Sands Missile Range portion)
Los Alamos
McKinley (effective until April 2027)
Mora
Quay
Rio Arriba
Roosevelt
San Miguel
Santa Fe
Socorro (Does not include the White Sands Missile Range portion)
Taos
Torrance
Union
Valencia

NEW YORK

Albany-Schenectady

Survey Area

New York:
Albany
Montgomery
Rensselaer
Saratoga
Schenectady

Area of Applicaton. Survey area plus:

Massachusetts:
Berkshire
New York:
Columbia
Delaware
Fulton
Greene
Hamilton
Schoharie
Warren
Washington
Vermont:
Bennington
Rutland

Buffalo

Survey Area

New York:
Erie
Niagara

Area of Application. Survey area plus:

New York:
Allegany
Cattaraugus
Chautauqua
Wyoming
Pennsylvania:
Elk (Only includes the Allegheny National Forest portion)
Forest (Only includes the Allegheny National Forest portion)
McKean
Warren

New York-Newark

Survey Area

New Jersey:
Bergen
Burlington (Only includes the Joint Base McGuire-Dix-Lakehurst portion)
Essex
Hudson
Middlesex
Monmouth (effective for wage surveys beginning in January 2028)
Morris
Ocean (effective for wage surveys beginning in January 2028)
Passaic
Somerset
Union
New York:
Bronx
Dutchess (effective for wage surveys beginning in January 2028)
Kings

Nassau
New York
Orange
Queens
Suffolk
Westchester
Pennsylvania:
Monroe (effective for wage surveys beginning in January 2028)

Area of Application. Survey area plus:

Connecticut:
Fairfield
New Jersey:
Hunterdon
Mercer
Monmouth (effective until January 2028)
Ocean (effective until January 2028)
Sussex
Warren
New York:
Dutchess (effective until January 2028)
Putnam
Richmond
Rockland
Sullivan
Ulster
Pennsylvania:
Carbon
Lehigh
Monroe (effective until January 2028)
Northampton
Pike
Wayne

Northern New York

Survey Area

New York:
Clinton
Franklin
Jefferson
St. Lawrence
Vermont:
Chittenden
Franklin
Grand Isle

Area of Application. Survey area plus:

New York:
Essex
Lewis
Vermont:
Addison
Caledonia
Essex
Lamoille
Orleans
Washington

Rochester

Survey Area

New York:
Livingston
Monroe
Ontario
Orleans
Steuben
Wayne

Area of Application. Survey area plus:

New York:
Chemung
Genesee
Schuyler
Seneca
Yates
Pennsylvania:
Tioga

Syracuse-Utica-Rome

Survey Area

New York:
Herkimer
Madison
Oneida
Onondaga
Oswego

Area of Application. Survey area plus:

New York:
Broome
Cayuga
Chenango
Cortland
Otsego
Tioga
Tompkins

NORTH CAROLINA

Asheville

Survey Area

North Carolina:
Buncombe
Haywood
Henderson
Madison
Transylvania

Area of Application. Survey area plus:

North Carolina:
Avery
Cherokee
Clay
Graham
Jackson
Macon
Mitchell
Polk
Rutherford
Swain
Yancey

Central North Carolina

Survey Area

North Carolina:
Cumberland
Durham
Harnett
Hoke
Johnston
Orange
Wake
Wayne

Area of Application. Survey area plus:

North Carolina:
Alamance
Bladen
Caswell
Chatham
Davidson
Davie
Edgecombe
Forsyth
Franklin
Granville
Guilford
Halifax
Lee
Montgomery
Moore
Nash
Northampton
Person
Randolph
Richmond
Robeson
Rockingham
Sampson
Scotland
Stokes
Surry
Vance
Warren
Wilson
Yadkin
South Carolina:
Dillon
Marion
Marlboro

Charlotte-Concord

Survey Area

North Carolina:
Cabarrus
Gaston
Mecklenburg
Rowan
Union

Area of Application. Survey area plus:

North Carolina:
Alexander
Anson
Burke
Caldwell
Catawba
Cleveland
Iredell
Lincoln
McDowell
Stanly
Wilkes
South Carolina:
Chester
Chesterfield
Lancaster
York

Southeastern North Carolina

Survey Area

North Carolina:
Brunswick
Carteret
Columbus
Craven
Jones
Lenoir
New Hanover
Onslow
Pamlico
Pender

Area of Application. Survey area plus:

North Carolina:
Beaufort
Bertie
Duplin
Greene
Hyde
Martin
Pitt
Washington

NORTH DAKOTA

North Dakota

Survey Area

Minnesota:
Clay
Polk
North Dakota:
Burleigh
Cass
Grand Forks
McLean
Mercer
Morton
Oliver
Traill
Ward

Area of Application. Survey area plus:

Minnesota:
Becker (does not include the White Earth Indian Reservation portion)
Kittson
Marshall
Norman
Otter Tail
Pennington
Red Lake
Roseau
Wilkin
North Dakota:
Adams
Barnes
Benson
Billings
Bottineau
Bowman
Burke
Cavalier
Dickey
Divide
Dunn
Eddy
Emmons
Foster
Golden Valley
Grant
Griggs
Hettinger
Kidder
LaMoure
Logan
McHenry
McIntosh
McKenzie
Mountrail
Nelson
Pembina
Pierce
Ramsey
Ransom
Renville
Richland
Rolette
Sargent
Sheridan
Sioux
Slope
Stark
Steele
Stutsman
Towner
Walsh
Wells
Williams

OHIO

Cincinnati

Survey Area

Indiana:
Dearborn
Kentucky:
Boone
Campbell
Kenton
Ohio:
Clermont
Hamilton
Warren

Area of Application. Survey area plus:

Indiana:
Franklin
Ohio
Ripley
Switzerland
Union
Kentucky:
Bracken
Carroll
Gallatin
Grant
Lewis
Mason
Owen
Pendleton
Robertson
Ohio:
Adams
Brown
Butler
Clinton
Highland

Cleveland-Akron-Canton

Survey Area

Ohio:
Cuyahoga
Geauga
Lake
Mahoning (effective for wage surveys beginning in April 2027)
Medina

Area of Application. Survey area plus:

Ohio:
Ashland
Ashtabula
Carroll
Columbiana
Coshocton
Crawford
Erie
Holmes
Huron
Lorain
Mahoning (effective until April 2027)
Ottawa
Portage
Richland
Sandusky
Stark
Summit
Trumbull
Tuscarawas
Wayne

Columbus-Marion-Zanesville

Survey Area

Ohio:
Delaware
Fairfield
Franklin
Licking
Madison
Pickaway
Ross (effective for wage surveys beginning in January 2027)

Area of Application. Survey area plus:

Ohio:
Athens
Fayette
Guernsey
Hancock
Hardin
Hocking
Knox
Logan
Marion
Morgan
Morrow
Muskingum
Noble
Perry
Pike
Ross (effective until January 2027)
Seneca
Union
Vinton
Wyandot

Dayton

Survey Area

Ohio:
Champaign
Clark
Greene
Miami
Montgomery
Preble

Area of Application. Survey area plus:

Ohio:
Allen
Auglaize
Darke
Mercer
Shelby
Van Wert

OKLAHOMA

Oklahoma City

Survey Area

Oklahoma:
Canadian
Cleveland
McClain
Oklahoma
Pottawatomie

Area of Application. Survey area plus:

Oklahoma:
Alfalfa
Atoka
Beckham
Blaine
Caddo
Coal
Custer
Dewey
Ellis
Garfield
Garvin
Grady

Grant
Harper
Hughes
Johnston
Kingfisher
Lincoln
Logan
Major
Marshall
Murray
Noble
Payne
Pontotoc
Roger Mills
Seminole
Washita
Woods
Woodward

Tulsa

Survey Area

Oklahoma:
Creek
Mayes
Muskogee
Osage
Pittsburg
Rogers
Tulsa
Wagoner

Area of Application. Survey area plus:

Arkansas:
Benton
Carroll
Crawford
Franklin (Only includes the Fort Chaffee portion)
Madison
Sebastian
Washington
Missouri:
McDonald
Oklahoma:
Adair
Cherokee
Choctaw
Craig
Delaware
Haskell
Kay
Latimer
Le Flore
McCurtain
McIntosh
Nowata
Okfuskee
Okmulgee
Ottawa
Pawnee
Pushmataha
Sequoyah
Washington

OREGON

Portland-Vancouver-Salem

Survey Area

Oregon:
Clackamas
Marion
Multnomah
Polk
Washington
Washington:
Clark

Area of Application. Survey area plus:

Oregon:
Benton
Clatsop
Columbia
Gilliam
Hood River
Linn
Sherman
Tillamook
Wasco
Yamhill
Washington:
Cowlitz
Klickitat
Skamania
Wahkiakum

Southwestern Oregon

Survey Area

Oregon:
Douglas
Jackson
Lane

Area of Application. Survey area plus:

California:
Del Norte
Oregon:
Coos
Crook
Curry
Deschutes
Jefferson
Josephine
Klamath
Lake
Lincoln

PENNSYLVANIA

Harrisburg-York-Lebanon

Survey Area

Pennsylvania:
Cumberland
Dauphin
Lebanon
Union (effective for wage surveys beginning in May 2026)
York

Area of Application. Survey area plus:

Pennsylvania:
Adams
Clinton
Juniata
Lancaster
Lycoming
Mifflin
Perry
Snyder
Union (effective until May 2026)

Philadelphia-Reading-Camden

Survey Area

Delaware:
Kent (effective for wage surveys beginning in October 2027)
New Castle (effective for wage surveys beginning in October 2027)
Maryland:
Cecil (effective for wage surveys beginning in October 2027)
New Jersey:
Burlington (Excluding the Joint Base McGuire-Dix-Lakehurst portion)
Camden
Gloucester
Salem (effective for wage surveys beginning in October 2027)
Pennsylvania:
Bucks
Chester
Delaware
Montgomery
Philadelphia

Area of Application. Survey area plus:

Delaware:
Kent (effective until October 2027)
New Castle (effective until October 2027)
Sussex
Maryland:
Cecil (effective until October 2027)
Somerset
Wicomico
Worcester (Does not include the Assateague Island portion)
New Jersey:
Atlantic
Cape May
Cumberland
Salem (effective until October 2027)
Pennsylvania:
Berks
Schuylkill

Pittsburgh

Survey Area

Pennsylvania:
Allegheny
Beaver
Butler
Cambria (effective for wage surveys beginning in July 2027)
Washington
Westmoreland

Area of Application. Survey area plus:

Ohio:
Belmont
Harrison
Jefferson
Pennsylvania:
Armstrong
Bedford
Blair
Cambria (effective until July 2027)
Cameron
Centre
Clarion
Clearfield
Crawford
Elk (Does not include the Allegheny National Forest portion)
Erie
Fayette
Forest (Does not include the Allegheny National Forest portion)
Greene
Huntingdon
Indiana
Jefferson
Lawrence
Mercer
Potter
Somerset
Venango
West Virginia:
Brooke
Hancock
Marshall

Ohio

Scranton-Wilkes-Barre

Survey Area

Pennsylvania:
Lackawanna
Luzerne

Area of Application. Survey area plus:

Pennsylvania:
Bradford
Columbia
Montour
Northumberland
Sullivan
Susquehanna
Wyoming

PUERTO RICO

Puerto Rico

Survey Area

Puerto Rico (Municipios):
Bayamón
Canóvanas
Carolina
Cataño
Guaynabo
Humacao
Loíza
San Juan
Toa Baja
Trujillo Alto

Area of Application.

Puerto Rico

SOUTH CAROLINA

Charleston

Survey Area

South Carolina:
Berkeley
Charleston
Dorchester

Area of Application. Survey area plus:

South Carolina:
Colleton
Georgetown
Horry
Williamsburg

Columbia

Survey Area

South Carolina:
Darlington
Florence
Kershaw
Lee
Lexington
Richland
Sumter

Area of Application. Survey area plus:

South Carolina:
Abbeville
Anderson
Calhoun
Cherokee
Clarendon
Fairfield
Greenville
Greenwood
Laurens
Newberry
Oconee
Orangeburg
Pickens
Saluda
Spartanburg
Union

SOUTH DAKOTA

Eastern South Dakota

Survey Area

South Dakota:
Minnehaha

Area of Application. Survey area plus:

Iowa:
Dickinson
Emmet
Lyon
Osceola
Minnesota:
Jackson
Lincoln
Lyon
Murray
Nobles
Pipestone
Rock
South Dakota:
Aurora
Beadle
Bennett
Bon Homme
Brookings
Brown
Brule
Buffalo
Campbell
Charles Mix
Clark
Clay
Codington
Corson
Davison
Day
Deuel
Dewey
Douglas
Edmunds
Faulk
Grant
Gregory
Haakon
Hamlin
Hand
Hanson
Hughes
Hutchinson
Hyde
Jerauld
Jones
Kingsbury
Lake
Lincoln
Lyman
McCook
McPherson
Marshall
Mellette
Miner
Moody
Potter
Roberts
Sanborn
Spink
Stanley
Sully
Todd
Tripp
Turner
Walworth
Yankton
Ziebach

TENNESSEE

Eastern Tennessee

Survey Area

Tennessee:
Carter
Hawkins
Sullivan
Unicoi
Washington
Virginia (city):
Bristol
Virginia (counties):
Scott
Washington

Area of Application. Survey area plus:

Kentucky:
Harlan
Letcher
North Carolina:
Alleghany
Ashe
Watauga
Tennessee:
Cocke
Greene
Hancock
Johnson
Virginia:
Buchanan
Grayson
Lee
Russell
Smyth
Tazewell

Memphis

Survey Area

Arkansas:
Crittenden
Mississippi
Mississippi:
De Soto
Tennessee:
Shelby
Tipton

Area of Application. Survey area plus:

Arkansas:
Craighead
Cross
Lee
Poinsett
St. Francis
Mississippi:
Benton
Lafayette (Only includes the Holly Springs National Forest portion)
Marshall
Panola
Pontotoc (Only includes the Holly Springs National Forest portion)
Tate
Tippah
Tunica
Union (Only includes the Holly Springs National Forest portion)

Missouri:
Dunklin
Pemiscot
Tennessee:
Carroll
Chester
Crockett
Dyer
Fayette
Gibson
Hardeman
Hardin
Haywood
Lake
Lauderdale
Madison
McNairy
Obion

Nashville

Survey Area

Kentucky:
Christian
Tennessee:
Cheatham
Davidson
Dickson
Montgomery
Robertson
Rutherford
Sumner
Williamson
Wilson

Area of Application. Survey area plus:

Alabama:
Jackson
Georgia:
Catossa
Chattooga
Dade
Murray
Walker
Whitfield
Illinois:
Massac
Kentucky:
Adair
Allen
Ballard
Barren
Butler
Caldwell
Calloway
Carlisle
Clinton
Cumberland
Edmonson
Fulton
Graves
Hickman
Hopkins
Livingston
Logan
Lyon
McCracken
Marshall
Metcalfe
Monroe
Muhlenberg
Russell
Simpson
Todd
Trigg
Warren
Tennessee:
Anderson
Bedford
Benton
Bledsoe
Blount
Bradley
Campbell
Cannon
Claiborne
Clay
Coffee
Cumberland
Decatur
DeKalb
Fentress
Franklin
Grainger
Grundy
Hamblen
Hamilton
Henderson
Henry
Hickman
Houston
Humphreys
Jackson
Jefferson
Knox
Lawrence
Lewis
Loudon
McMinn
Macon
Marion
Marshall
Maury
Meigs
Monroe
Moore
Morgan
Overton
Perry
Pickett
Polk
Putnam
Rhea
Roane
Scott
Sequatchie
Sevier
Smith
Stewart
Trousdale
Union
Van Buren
Warren
Weakley
White

TEXAS

Austin

Survey Area

Texas:
Hays
Milam
Travis
Williamson

Area of Application. Survey area plus:

Texas:
Bastrop
Blanco
Burnet
Caldwell
Fayette
Lee
Llano
Mason
San Saba

Corpus Christi-Kingsville-Alice

Survey Area

Texas:
Hidalgo (effective for wage surveys beginning in June 2026)
Nueces
San Patricio

Area of Application. Survey area plus:

Texas:
Aransas
Bee
Brooks
Calhoun
Cameron
Duval
Goliad
Hidalgo (effective until June 2026)
Jim Wells
Kenedy
Kleberg
Live Oak
Refugio
Starr
Victoria
Willacy

Dallas-Fort Worth

Survey Area

Texas:
Collin
Dallas
Denton
Ellis
Grayson
Hood
Johnson
Kaufman
Parker
Rockwall
Tarrant
Wise

Area of Application. Survey area plus:

Oklahoma:
Bryan
Carter
Love
Texas:
Cherokee
Cooke
Delta
Erath
Fannin
Henderson
Hill
Hopkins
Hunt
Jack
Lamar
Montague
Navarro
Palo Pinto
Rains
Smith
Somervell
Van Zandt
Wood

El Paso

Survey Area

New Mexico:
Dona Ana
Otero
Texas:
El Paso

Area of Application. Survey area plus:

New Mexico:
Chaves
Eddy
Grant
Hidalgo
Lincoln (Only includes the White Sands Missile Range portion)
Luna
Sierra
Socorro (Only includes the White Sands Missile Range portion)
Texas:
Culberson
Hudspeth

Houston-Galveston-Texas City

Survey Area

Texas:
Brazoria
Fort Bend
Galveston
Harris
Liberty
Montgomery
Waller

Area of Application. Survey area plus:

Texas:
Angelina
Austin
Chambers
Colorado
Grimes
Hardin
Houston
Jackson
Jasper
Jefferson
Lavaca
Madison
Matagorda
Nacogdoches
Newton
Orange
Polk
Sabine
San Augustine
San Jacinto
Shelby
Trinity
Tyler
Walker
Washington
Wharton

San Antonio

Survey Area

Texas:
Bexar
Comal
Guadalupe

Area of Application. Survey area plus:

Texas:
Atascosa
Bandera
DeWitt
Dimmit
Edwards
Frio
Gillespie
Gonzales
Jim Hogg
Karnes
Kendall
Kerr
Kinney
La Salle
McMullen
Maverick
Medina
Real
Uvalde
Val Verde
Webb
Wilson
Zapata
Zavala

Texarkana

Survey Area

Arkansas:
Little River
Miller
Texas:
Bowie

Area of Application. Survey area plus:

Arkansas:
Columbia
Hempstead
Howard
Lafayette
Nevada
Sevier
Texas:
Camp
Cass
Franklin
Marion
Morris
Red River
Titus

Waco

Survey Area

Texas:
Bell
Coryell
McLennan

Area of Application. Survey area plus:

Texas:
Anderson
Bosque
Brazos
Burleson
Falls
Freestone
Hamilton
Lampasas
Leon
Limestone
Mills
Robertson

Western Texas

Survey Area

Texas:
Callahan
Ector
Howard
Jones
Lubbock
Midland
Nolan
Taylor
Tom Green

Area of Application. Survey area plus:

New Mexico:
Lea
Oklahoma:
Beaver
Cimarron
Texas
Texas:
Andrews
Armstrong
Bailey
Borden
Brewster
Briscoe
Brown
Carson
Castro
Childress
Cochran
Coke
Coleman
Collingsworth
Comanche
Concho
Cottle
Crane
Crockett
Crosby
Dallam
Dawson
Deaf Smith
Dickens
Donley
Eastland
Fisher
Floyd
Gaines
Garza
Glasscock
Gray
Hale
Hall
Hansford
Hartley
Haskell
Hemphill
Hockley
Hutchinson
Irion
Jeff Davis
Kent
Kimble
King
Lamb
Lipscomb
Loving
Lynn
McCulloch
Martin
Menard
Mitchell
Moore
Motley
Ochiltree
Oldham
Parmer
Pecos
Potter

Presidio
Randall
Reagan
Reeves
Roberts
Runnels
Schleicher
Scurry
Shackelford
Sherman
Stephens
Sterling
Stonewall
Sutton
Swisher
Terrell
Terry
Throckmorton
Upton
Ward
Wheeler
Winkler
Yoakum

Wichita Falls, Texas-Southwestern Oklahoma

Survey Area

Oklahoma:
Comanche
Cotton
Stephens
Tillman
Texas:
Archer
Clay
Wichita

Area of Application. Survey area plus:

Oklahoma:
Greer
Harmon
Jackson
Jefferson
Kiowa
Texas:
Baylor
Foard
Hardeman
Knox
Wilbarger
Young

UTAH

Utah

Survey Area

Utah:
Box Elder
Davis
Salt Lake
Tooele
Utah
Weber

Area of Application. Survey area plus:

Colorado:
Mesa
Moffat
Idaho:
Franklin
Utah:
Beaver
Cache
Carbon
Daggett
Duchesne
Emery
Garfield (Does not include the Bryce Canyon, Capitol Reef, and Canyonlands National Parks portions)
Grand (Does not include the Arches and Canyonlands National Parks portions)
Iron (Does not include the Cedar Breaks National Monument and Zion National Park portions)
Juab
Millard
Morgan
Piute
Rich
Sanpete
Sevier
Summit
Uintah
Wasatch
Wayne (Does not include the Capitol Reef and Canyonlands National Parks portions)

VIRGINIA

Richmond

Survey Area

Virginia (cities):
Colonial Heights
Hopewell
Petersburg
Richmond
Virginia (counties):
Charles City
Chesterfield
Dinwiddie
Goochland
Hanover
Henrico
New Kent
Powhatan
Prince George

Area of Application. Survey area plus:

Virginia (cities):
Charlottesville
Emporia
Virginia (counties):
Albemarle (Does not include the Shenandoah National Park portion)
Amelia
Brunswick
Buckingham
Charlotte
Cumberland
Essex
Fluvanna
Greene (Does not include the Shenandoah National Park portion)
Greensville
King and Queen
King William
Lancaster
Louisa
Lunenburg
Mecklenburg
Nelson
Northumberland
Nottoway
Prince Edward
Richmond
Sussex

Roanoke

Survey Area

Virginia (cities):
Radford
Roanoke
Salem
Virginia (counties):
Botetourt
Craig
Montgomery
Roanoke

Area of Application. Survey area plus:

Virginia (cities):
Buena Vista
Covington
Danville
Galax
Lexington
Lynchburg
Martinsville
Staunton
Waynesboro
Virginia (counties):
Alleghany
Amherst
Appomattox
Augusta (Does not include the Shenandoah National Park portion)
Bath
Bedford
Bland
Campbell
Carroll
Floyd
Franklin
Giles
Halifax
Henry
Highland
Patrick
Pittsylvania
Pulaski
Rockbridge
Wythe

Virginia Beach-Chesapeake

Survey Area

North Carolina:
Currituck
Pasquotank (effective for wage surveys beginning in May 2026)
Virginia (cities):
Chesapeake
Hampton
Newport News
Norfolk
Poquoson
Portsmouth
Suffolk
Virginia Beach
Williamsburg
Virginia (counties):
Gloucester
James City
York

Area of Application. Survey area plus:

Maryland:
Worcester (Only includes the Assateague Island portion)
North Carolina:
Camden
Chowan
Dare
Gates
Hertford
Pasquotank (effective until May 2026)
Perquimans

Tyrrell
Virginia (city):
Franklin
Virginia (counties):
Accomack
Isle of Wight
Mathews
Middlesex
Northampton
Southampton
Surry

WASHINGTON

Seattle-Tacoma

Survey Area

Washington:
Island (effective for wage surveys beginning in September 2026)
King
Kitsap
Pierce
Snohomish

Area of Application. Survey area plus:

Washington:
Chelan (Only includes the North Cascades National Park section)
Clallam
Grays Harbor
Island (effective until September 2026)
Jefferson
Lewis
Mason
Pacific
San Juan
Skagit
Thurston
Whatcom

Southeastern Washington-Eastern Oregon

Survey Area

Oregon:
Umatilla
Washington:
Benton
Franklin
Walla Walla
Yakima

Area of Application. Survey area plus:

Oregon:
Baker
Grant
Harney
Malheur
Morrow
Union
Wallowa
Wheeler
Washington:
Columbia
Kittitas (Only includes the Yakima Firing Range portion)

Spokane

Survey Area

Washington:
Spokane

Area of Application. Survey area plus:

Idaho:
Benewah
Bonner
Boundary
Clearwater
Idaho
Kootenai
Latah
Lewis
Nez Perce
Shoshone
Washington:
Adams
Asotin
Chelan (Does not include the North Cascades National Park portion)
Douglas
Ferry
Garfield
Grant
Kittitas (Does not include the Yakima Firing Range portion)
Lincoln
Okanogan
Pend Oreille
Stevens
Whitman

WEST VIRGINIA

West Virginia

Survey Area

Kentucky:
Boyd
Greenup
Ohio:
Lawrence
West Virginia:
Cabell
Harrison
Kanawha
Marion
Monongalia
Putnam
Wayne

Area of Application. Survey area plus:

Kentucky:
Carter
Elliott
Floyd
Johnson
Lawrence
Magoffin
Martin
Pike
Ohio:
Gallia
Jackson
Meigs
Monroe
Scioto
Washington
Virginia (city):
Norton
Virginia (counties):
Dickenson
Wise
West Virginia:
Barbour
Boone
Braxton
Calhoun
Clay
Doddridge
Fayette
Gilmer
Grant
Greenbrier
Jackson
Lewis
Lincoln
Logan
McDowell
Mason
Mercer
Mingo
Monroe
Nicholas
Pendleton
Pleasants
Pocahontas
Preston
Raleigh
Randolph
Ritchie
Roane
Summers
Taylor
Tucker
Tyler
Upshur
Webster
Wetzel
Wirt
Wood
Wyoming

WISCONSIN

Madison

Survey Area

Wisconsin:
Dane

Area of Application. Survey area plus:

Wisconsin:
Adams
Columbia
Grant
Green
Green Lake
Iowa
Lafayette
Marquette
Rock
Sauk
Waushara

Milwaukee-Racine-Waukesha

Survey Area

Wisconsin:
Milwaukee
Ozaukee
Washington
Waukesha

Area of Application. Survey area plus:

Wisconsin:
Brown
Calumet
Dodge
Door
Fond du Lac
Jefferson
Kewaunee
Manitowoc
Menominee
Oconto
Outagamie
Racine
Shawano
Sheboygan
Walworth
Winnebago

Southwestern Wisconsin

Survey Area

Wisconsin:
- Chippewa
- Eau Claire
- La Crosse
- Monroe
- Trempealeau

Area of Application. Survey area plus:

Minnesota:
- Houston

Wisconsin:
- Barron
- Buffalo
- Clark
- Crawford
- Dunn
- Forest
- Jackson
- Juneau
- Langlade
- Lincoln
- Marathon
- Oneida
- Pepin
- Portage
- Price
- Richland
- Rusk
- Taylor
- Vernon
- Vilas
- Waupaca
- Wood

WYOMING

Wyoming

Survey Area

South Dakota:
- Pennington

Wyoming:
- Albany
- Laramie
- Natrona

Area of Application. Survey area plus:

Nebraska:
- Banner
- Box Butte
- Cheyenne
- Dawes
- Deuel
- Garden
- Kimball
- Morrill
- Scotts Bluff
- Sheridan
- Sioux

South Dakota:
- Butte
- Custer
- Fall River
- Harding
- Jackson
- Lawrence
- Meade
- Oglala Lakota
- Perkins

Wyoming:
- Campbell
- Carbon
- Converse
- Crook
- Fremont
- Goshen
- Hot Springs
- Johnson
- Lincoln
- Niobrara
- Platte
- Sheridan
- Sublette
- Sweetwater
- Uinta
- Washakie
- Weston

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Part IV

Department of Energy

10 CFR Part 431
Energy Conservation Program: Energy Conservation Standards for Commercial Refrigerators, Freezers, and Refrigerator-Freezers; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2017–BT–STD–0007]

RIN 1904–AD82

Energy Conservation Program: Energy Conservation Standards for Commercial Refrigerators, Freezers, and Refrigerator-Freezers

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

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including commercial refrigerators, freezers, and refrigerator-freezers (''commercial refrigeration equipment'' or ''CRE''). EPCA also requires the U.S. Department of Energy (''DOE'') to periodically review its existing standards to determine whether more-stringent standards would be technologically feasible and economically justified and would result in significant energy savings. In this final rule, DOE is adopting new and amended energy conservation standards for CRE. It has determined that the new and amended energy conservation standards for this equipment would result in significant conservation of energy and are technologically feasible and economically justified.

DATES: The effective date of this rule is March 24, 2025. Compliance with the new and amended standards established for commercial refrigerators, freezers, and refrigerator-freezers in this final rule is required on and after Monday, January 22, 2029. The incorporation by reference of certain material listed in this rule was approved by the Director of the Federal Register as of March 10, 2009 and October 23, 2013.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/EERE-2017-BT-STD-0007.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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

FOR FURTHER INFORMATION CONTACT:

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I. Synopsis of the Final Rule

EPCA, Public Law 94–163, as amended,[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317, as codified) Title III, Part C of EPCA,[2] added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. (42 U.S.C. 6311–6317, as codified) Such equipment includes CRE, the subject of this rulemaking. (42 U.S.C. 6311(1)(E))

Pursuant to EPCA, DOE is required to review its existing energy conservation standards for covered equipment no later than 6 years after issuance of any final rule establishing or amending a standard. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(m)(1)) Pursuant to that statutory provision, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (''NOPR'') including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (*Id.*) Any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in significant conservation of energy. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(3)(B)) DOE has conducted this review of the energy conservation standards for CRE under EPCA's 6-year-lookback authority described herein. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(m)(1))

In accordance with these and other statutory provisions discussed in this document, DOE analyzed the benefits and burdens of six trial standard levels (''TSLs'') for CRE. The TSLs and their associated benefits and burdens are discussed in detail in sections V.A through V.C of this document. As discussed in section V.C of this document, DOE has determined that TSL 3 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified. The adopted standards, which are expressed in maximum daily energy consumption (''MDEC'') as a function of the volume or total display area (''TDA''), are shown in table I.1. These standards apply to all equipment listed in table I.1 and manufactured in, or imported into, the United States starting on the date 4 years after the publication of the final rule for this rulemaking. As discussed in section II.B.3 of this document, DOE is not, at this time, amending standards for the large-capacity CRE ranges presented in table IV.6 for the VOP.SC.M, SVO.SC.M, HZO.SC.L, SOC.SC.M, VCT.SC.M, VCT.SC.L, and VCS.SC.L equipment classes.

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[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflects the last statutory amendments that impact Parts A and A–1 of EPCA.

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

Table I.1 Energy Conservation Standards for Commercial Refrigerators, Freezers, and Refrigerator-Freezers (Compliance Starting January 22, 2029)

Equipment Class	Capacity Range	Maximum Daily Energy Consumption *kWh/day**
VOP.RC.H	All TDAs are applicable	0.551 × TDA + 3.506
VOP.RC.M	All TDAs are applicable	0.591 × TDA + 3.758
VOP.RC.L	All TDAs are applicable	2.079 × TDA + 6.472
VOP.RC.I	All TDAs are applicable	2.637 × TDA + 8.222
SVO.RC.H	All TDAs are applicable	0.572 × TDA + 2.756
SVO.RC.M	All TDAs are applicable	0.611 × TDA + 2.944
SVO.RC.L	All TDAs are applicable	2.079 × TDA + 6.473
SVO.RC.I	All TDAs are applicable	2.637 × TDA + 8.222
HZO.RC.H	All TDAs are applicable	0.350 × TDA + 2.880
HZO.RC.M	All TDAs are applicable	0.350 × TDA + 2.880
HZO.RC.L	All TDAs are applicable	0.550 × TDA + 6.880
HZO.RC.I	All TDAs are applicable	0.700 × TDA + 8.740
VCT.RC.H	All TDAs are applicable	0.150 × TDA + 1.950
VCT.RC.M	All TDAs are applicable	0.150 × TDA + 1.950
VCT.RC.L	All TDAs are applicable	0.490 × TDA + 2.610
VCT.RC.I	All TDAs are applicable	0.580 × TDA + 3.050
HCT.RC.M	All TDAs are applicable	0.160 × TDA + 0.130
HCT.RC.L	All TDAs are applicable	0.340 × TDA + 0.260
HCT.RC.I	All TDAs are applicable	0.356 × TDA + 0.276
VCS.RC.H	All volumes are applicable	0.100 × V + 0.260
VCS.RC.M	All volumes are applicable	0.100 × V + 0.260
VCS.RC.L	All volumes are applicable	0.210 × V + 0.540
VCS.RC.I	All volumes are applicable	0.250 × V + 0.630
HCS.RC.M	All volumes are applicable	0.100 × V + 0.260
HCS.RC.L	All volumes are applicable	0.210 × V + 0.540
HCS.RC.I	All volumes are applicable	0.250 × V + 0.630
SOC.RC.H	All TDAs are applicable	0.440 × TDA + 0.110
SOC.RC.M	All TDAs are applicable	0.440 × TDA + 0.110
SOC.RC.L	All TDAs are applicable	0.930 × TDA + 0.220
SOC.RC.I	All TDAs are applicable	0.970 × TDA + 0.231
CB.RC.M	All volumes are applicable	0.050 × V + 0.686
CB.RC.L	All volumes are applicable	0.194 × V + 1.693
VOP.SC.H	All TDAs are applicable	0.890 × TDA + 2.480****
VOP.SC.M – Non-Large	TDA ≤ 17	1.230 × TDA + 3.428
VOP.SC.M – Large***	TDA > 17	1.69 × TDA + 4.71
VOP.SC.L	All TDAs are applicable	3.092 × TDA + 8.598
VOP.SC.I	All TDAs are applicable	3.928 × TDA + 10.926

SVO.SC.H	All volumes are applicable	1.045 × TDA + 2.822
SVO.SC.M – Non-Large	TDA ≤ 15	1.207 × TDA + 3.258
SVO.SC.M – Large***	TDA > 15	1.7 × TDA + 4.59
SVO.SC.L	All TDAs are applicable	3.024 × TDA + 8.169
SVO.SC.I	All TDAs are applicable	3.840 × TDA + 10.384
HZO.SC.H	All TDAs are applicable	0.546 × TDA + 4.211
HZO.SC.M	All TDAs are applicable	0.532 × TDA + 4.100
HZO.SC.L – Non-Large	TDA ≤ 35	1.490 × TDA + 5.554
HZO.SC.L – Large***	TDA > 35	1.9 × TDA + 7.08
HZO.SC.I	All TDAs are applicable	1.900 × TDA + 7.065
VCT.SC.H	All volumes are applicable	0.047 × V + 0.493
VCT.SC.M – Non-Large	V ≤ 100	0.073 × V + 0.630
VCT.SC.M with Feature**	V ≤ 100	0.078 × V + 0.674
VCT.SC.M – Large***	V > 100	0.1 × V + 0.86
VCT.SC.L – Non-Large	V ≤ 70	0.233 × V + 2.374
VCT.SC.L with Feature**	V ≤ 70	0.249 × V + 2.540
VCT.SC.L – Large***	V > 70	0.29 × V + 2.95
VCT.SC.I	All TDAs are applicable	0.620 × TDA + 3.290
HCT.SC.M	All volumes are applicable	0.060 × V + 0.370
HCT.SC.L	All volumes are applicable	0.080 × V + 1.230
HCT.SC.I	All TDAs are applicable	0.498 × TDA + 0.383
VCS.SC.H	All volumes are applicable	0.021 × V + 0.793
VCS.SC.M	All volumes are applicable	0.038 × V + 1.039
VCS.SC.M with Feature**	All volumes are applicable	0.041 × V + 1.112
VCS.SC.L – Non-Large	V ≤ 100	0.169 × V + 1.059****
VCS.SC.L with Feature**	V ≤ 100	0.181 × V + 1.133
VCS.SC.L – Large***	V > 100	0.22 × V + 1.38
VCS.SC.I	All volumes are applicable	0.264 × V + 0.683
HCS.SC.M	All volumes are applicable	0.037 × V + 0.675
HCS.SC.L	All volumes are applicable	0.055 × V + 1.033
HCS.SC.L with Feature**	All TDAs are applicable	0.059 × V + 1.105
HCS.SC.I	All volumes are applicable	0.313 × V + 0.811
SOC.SC.H	All TDAs are applicable	0.304 × TDA + 0.584
SOC.SC.M – Non-Large	TDA ≤ 40	0.356 × TDA + 0.685
SOC.SC.M – Large***	TDA > 40	0.52 × TDA + 1.
SOC.SC.L	All TDAs are applicable	1.100 × TDA + 2.100
SOC.SC.I	All TDAs are applicable	1.530 × TDA + 0.360
CB.SC.M	All volumes are applicable	0.081 × V + 1.117

CB.SC.L	All volumes are applicable	0.297 × V + 2.591
PD.SC.M	All volumes are applicable	0.11 × V + 0.81

The equipment classes are separated by equipment family, condensing unit configuration, and operating temperature.
Equipment Families: VOP – Vertical Open; SVO – Semi-Vertical Open; HZO – Horizontal Open; VCT – Vertical Closed Transparent; HCT – Horizontal Closed Transparent; VCS – Vertical Closed Solid; HCS – Horizontal Closed Solid; SOC – Service Over Counter; CB – Chef Base or Griddle Stand; PD – Pull Down.
Condensing Unit Configurations: RC – Remote Condensing; SC – Self-Contained.
Operating Temperatures: H – High Temperature; M – Medium Temperature; L – Low Temperature; I – Ice Cream Temperature.
* V is the volume, expressed in ft^3, as determined in appendix B to subpart C of part 431. TDA is the total display area, expressed in ft^2, as determined in appendix B to subpart C of part 431.
** For equipment classes designated "with Feature," refer to table I.2 for the list of qualifying features applicable to each class.
*** As discussed in section II.B.3 of this document, DOE is continuing to analyze the large-capacity ranges presented in table IV.6 for the VOP.SC.M, SVO.SC.M, HZO.SC.L, SOC.SC.M, VCT.SC.M, VCT.SC.L, and VCS.SC.L equipment classes.
**** The equations for VOP.SC.H and VCS.SC.L were written incorrectly in the August 2024 NODA Support Document and have been corrected here which is consistent with the secondary mapping in table 4.1 of the August 2024 NODA.

Table I.2 Applicable Features for Equipment Classes Designated "with Feature" for Maximum Daily Energy Consumption Standards for Commercial Refrigerators, Freezers, and Refrigerator-Freezers

Equipment Class	Applicable Feature(s)
VCT.SC.M (≤ 100)	Pass-through doors Sliding doors Both pass-through and sliding doors Roll-in doors Roll-through doors
VCT.SC.L (≤ 70)	Pass-through doors
VCS.SC.M	Pass-through doors Roll-in doors Roll-through doors Drawer units
VCS.SC.L (≤ 100)	Pass-through doors Roll-in doors Roll-through doors Drawer units
HCS.SC.L	Forced air evaporator

BILLING CODE 6450–01–C

ARI Standard 1200–2006 and AHRI Standard 1200 (I–P)–2010 are referenced in the amendatory text of this document and were previously approved for § 431.66.

A. Benefits and Costs to Consumers [3]

Table I.3 summarizes DOE's evaluation of the economic impacts of the adopted standards on consumers of CRE, as measured by the average life-cycle cost (''LCC'') savings and the simple payback period (''PBP'').[4] The average LCC savings are positive for all equipment classes, and the PBP is less than the average lifetime of CRE, which is estimated to be 14.0 years (see section IV.F of this document).

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Table I.3 Impacts of Adopted Energy Conservation Standards on Consumers of CRE

CRE Class	Average LCC Savings *2023$*	Simple Payback Period *years*
CB.SC.L	163.6	4.0
CB.SC.M	8.1	6.8
HCS.SC.L	24.1	3.2
HCS.SC.M	18.9	4.0
HCT.SC.I	29.3	7.0
HCT.SC.L	0.0	0.0
HCT.SC.M	0.0	0.0
HZO.RC.L	0.0	0.0
HZO.RC.M	0.0	0.0
HZO.SC.L	1243.6	2.4
HZO.SC.M	312.9	2.6
SOC.RC.M	0.0	0.0
SOC.SC.M	443.5	2.4
SVO.RC.M	97.1	2.4
SVO.SC.M	578.9	4.1
VCS.SC.H	9.8	4.0
VCS.SC.I	488.2	3.1
VCS.SC.L	470.5	2.2
VCS.SC.M	29.1	3.0
VCT.RC.L	0.0	0.0
VCT.RC.M	0.0	0.0
VCT.SC.H	19.3	4.0
VCT.SC.I	0.0	0.0
VCT.SC.L	436.9	3.5
VCT.SC.M	33.2	6.5
VOP.RC.L	1300.4	0.9
VOP.RC.M	337.4	1.8
VOP.SC.M	1867.5	1.4

BILLING CODE 6450–01–C

DOE's analysis of the impacts of the adopted standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value (''INPV'') is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2024–2058). Using a real discount rate of 10.0 percent, DOE estimates that the INPV for manufacturers of CRE in the case without new and amended standards is $3,022.3 million in 2023$. Under the adopted standards, DOE estimates the change in INPV to range from −2.6 percent to −1.7 percent, which is approximately −$77.8 million to −$51.3 million. In order to bring equipment into compliance with new and amended standards, it is estimated that industry will incur total conversion costs of $117.7 million.

DOE's analysis of the impacts of the adopted standards on manufacturers is described in section IV.J of this document. The analytic results of the manufacturer impact analysis (''MIA'') are presented in section V.B.2 of this document.

C. National Benefits and Costs

DOE's analyses indicate that the adopted energy conservation standards for CRE would save a significant amount of energy. The adopted TSL is TSL 3. Relative to the case without new and amended standards, the lifetime energy savings for CRE purchased during the 30-year period that begins in the anticipated year of compliance with the new and amended standards (2029–

[3] All monetary values in this document are expressed in 2023 dollars unless indicated otherwise. For purposes of discounting future monetary values, the present year in the analysis was 2024.

[4] The average LCC savings refer to consumers that are affected by a standard and are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of new or amended standards (see section IV.F.9 of this document). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (see section IV.C of this document).

2058) amount to 1.11 quadrillion British thermal units (''Btu''), or quads.[5] This represents a savings of 6.5 percent relative to the energy use of this equipment in the case without new and amended standards (referred to as the ''no-new-standards case'').

The cumulative net present value (''NPV'') of total consumer benefits of the standards for CRE ranges from $1.32 billion 2023$ (at a 7-percent discount rate) to $3.43 billion 2023$ (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased equipment costs for CRE purchased during the period 2029–2058.

In addition, the adopted standards for CRE are projected to yield significant environmental benefits. DOE estimates that the standards will result in cumulative emission reductions (over the same period as for energy savings) of 19.7 million metric tons (''Mt'')[6] of carbon dioxide (''CO_2''), 6.0 thousand tons of sulfur dioxide (''SO_2''), 36.9 thousand tons of nitrogen oxides (''NO_X''), 168 thousand tons of methane (''CH_4''), 0.2 thousand tons of nitrous oxide (''N_2O''), and 0.04 tons of mercury (''Hg'').[7]

DOE estimates the value of climate benefits from a reduction in greenhouse gases (''GHG'') using different estimates of the social cost of CO_2 (''SC–CO_2''), the social cost of methane (''SC–CH_4''), and the social cost of nitrous oxide (''SC–N_2O''). Together these represent the social cost of GHG (''SC–GHG''). DOE used an updated set of SC–GHG estimates (in terms of benefit per ton of GHG avoided) published in 2023 by the Environmental Protection Agency (''EPA'') (''2023 SC–GHG''), as well as the interim SC–GHG values developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (''IWG'') in 2021 (''2021 Interim SC–GHG''), which DOE used in the notice of proposed rulemaking for this rule before the updated values were available.[8] These values are discussed in section IV.L of this document. The climate benefits associated with the average SC–GHG at a 2-percent near-term Ramsey discount rate using the 2023 SC–GHG estimates are estimated to be $4.6 billion, and the climate benefits associated with the average 2021 Interim SC–GHG estimates at a 3-percent discount rate are estimated to be $1.12 billion. DOE notes, however, that the adopted standards would be economically justified even without inclusion of the estimated monetized benefits of reduced GHG emissions.

DOE estimated the monetary health benefits of SO_2 and NO_X emissions reductions using benefit-per-ton estimates from the EPA's Benefits Mapping and Analysis Program[9] as discussed in Section IV.L of this document. DOE did not monetize the change in mercury emissions because the quantity is very small. DOE estimated the present value of the health benefits would be $0.86 billion using a 7-percent discount rate, and $2.19 billion using a 3-percent discount rate.[10] DOE is currently only monetizing health benefits from changes in ambient fine particulate matter (''$PM_{2.5}$'') concentrations from two precursors (SO_2 and NO_X), and from changes in ambient ozone from one precursor (NO_X), but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions.

Table I.4 summarizes the monetized benefits and costs expected to result from the new and amended standards for CRE. There are other important unquantified effects, including certain unquantified climate benefits, unquantified public health benefits from the reduction of toxic air pollutants and other emissions, unquantified energy security benefits, and distributional effects, among others.

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[5] The quantity refers to full-fuel-cycle (''FFC'') energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.2 of this document.

[6] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[7] DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2023* (''*AEO2023*''). *AEO2023* represents current federal and state legislation and final implementation of regulations as of the time of its preparation. See chapter 13 of this final rule TSD for further discussion of AEO2023 assumptions that affect air pollutant emissions.

[8] Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990 published in February 2021 by the IWG. (''February 2021 SC–GHG TSD''). *www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf https://www.epa.gov/system/files/documents/2023-12/eo12866_oil-and-gas-nsps-eg-climate-review-2060-av16-final-rule-20231130.pdf; https://www.epa.gov/system/files/documents/2023-12/epa_scghg_2023_report_final.pdf* (last accessed July 3, 2024).

[9] Estimating the Benefit per Ton of Reducing Directly-Emitted $PM_{2.5}$, $PM_{2.5}$ Precursors and Ozone Precursors from 21 Sectors. Available at *www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors.*

[10] DOE estimates the economic value of these emissions reductions resulting from the considered TSLs for the purpose of complying with the requirements of Executive Order 12866.

Table I.4 Summary of Monetized Benefits and Costs of the Adopted Energy Conservation Standards for CRE at TSL 3 Shipped During the Period 2029–2058

	Billion 2023$
3% discount rate	
Consumer Operating Cost Savings	4.61
Climate Benefits* (2023 SC-GHG estimates)	4.60
Climate Benefits* (2021 interim SC-GHG estimates)	1.12
Health Benefits**	2.19
Total Benefits† (2023 SC-GHG estimates)	11.4
Total Benefits† (2021 interim SC-GHG estimates)	7.92
Consumer Incremental Equipment Costs‡	1.18
Net Benefits† (2023 SC-GHG estimates)	10.2
Net Benefits† (2021 interim SC-GHG estimates)	6.74
Change in Producer Cash Flow (INPV)‡‡	(0.08) – (0.05)
7% discount rate	
Consumer Operating Cost Savings	1.99
Climate Benefits* (2023 SC-GHG estimates)	4.60
Climate Benefits* (2021 interim SC-GHG estimates)	1.12
Health Benefits**	0.86
Total Benefits† (2023 SC-GHG estimates)	7.45
Total Benefits† (2021 interim SC-GHG estimates)	3.96
Consumer Incremental Equipment Costs	0.67
Net Benefits† (2023 SC-GHG estimates)	6.78
Net Benefits† (2021 interim SC-GHG estimates)	3.29
Change in Producer Cash Flow (INPV)‡‡	(0.08) – (0.05)

Note: These results include consumer, climate, and health benefits that accrue after 2058 from the equipment shipped during the period 2029−2058.

* Climate benefits are calculated using different estimates of the social cost of carbon (SC-CO_2), methane (SC-CH_4), and nitrous oxide (SC-N_2O). Climate benefits are estimated using two separate sets of estimates of the social cost for each greenhouse gas, an updated set published in 2023 by the Environmental Protection Agency (EPA) ("2023 SC-GHG") and the interim set of estimates used in the NOPR which were published in 2021 by the Interagency Working Group on the SC-GHG (IWG) ("2021 Interim SC-GHG") (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 2 percent near-term Ramsey discount rate are shown for the 2023 SC-GHG estimates, and the climate benefits associated with the average SC-GHG at a 3 percent discount rate are shown for the 2021 interim SC-GHG estimates.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. Table 5 of the EPA's *Estimating the Benefit per Ton of Reducing PM2.5 Precursors from 21 Sectors* TSD provides a summary of the health impact endpoints quantified in the analysis. See section IV.L of this document for more details.

† Total and net benefits include those consumer, climate, and health benefits that can be quantified and monetized. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the

average SC-GHG with a 2 percent near term Ramsey discount rate for the 2023 SC-GHG estimates and the average SC-GHG with 3-percent discount rate for the 2021 interim SC-GHG estimates

‡‡ Operating Cost Savings are calculated based on the life-cycle cost analysis and national impact analysis as discussed in detail below. See sections IV.F and IV.H of this document. DOE's national impact analysis includes all impacts (both costs and benefits) along the distribution chain beginning with the increased costs to the manufacturer to manufacture the equipment and ending with the increase in price experienced by the consumer. DOE also separately conducts a detailed analysis on the impacts on manufacturers (*i.e.*, manufacturer impact analysis, or "MIA"). See section IV.J of this document. In the detailed MIA, DOE models manufacturers' pricing decisions based on assumptions regarding investments, conversion costs, cash flow, and margins. The MIA produces a range of impacts, which is the rule's expected impact on the INPV. The change in INPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. Change in INPV is calculated using the industry weighted-average cost of capital value of 10.0 percent that is estimated in the MIA (see chapter 12 of the final rule technical support document ("TSD") for a complete description of the industry weighted-average cost of capital). For CRE, the change in INPV ranges from -$79 million to -$51 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. See section V.C of this document. DOE is presenting the range of impacts to the INPV under two manufacturer markup scenarios: the preservation-of-gross-margin scenario, which is the manufacturer markup scenario used in the calculation of consumer operating cost savings in this table; and the preservation-of-operating-profit scenario, where DOE assumed manufacturers would not be able to increase per-unit operating profit in proportion to increases in manufacturer production costs. DOE includes the range of estimated INPV in the above table, drawing on the MIA explained further in section IV.J of this document to provide additional context for assessing the estimated impacts of this final rule to society, including potential changes in production and consumption, which is consistent with OMB's Circular A-4 and E.O. 12866. If DOE were to include the INPV into the net benefit calculation using the 2023 SC-GHG estimates for this final rule, the net benefits would range from $10.12 billion to $10.15 billion at 3-percent discount rate and would range from $6.70 billion to $6.73 billion at 7-percent discount rate.

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The benefits and costs of the adopted standards can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are: (1) the reduced consumer operating costs, minus (2) the increase in equipment purchase prices and installation costs, plus (3) the value of climate and health benefits of emission reductions, all annualized.[11]

The national operating cost savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered equipment and are measured for the lifetime of CRE shipped during the period 2029–2058. The benefits associated with reduced emissions achieved as a result of the adopted standards are also calculated based on the lifetime of CRE shipped during the period 2029–2058. Total benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with a 2 percent near-term Ramsey discount rate for the 2023 SC–GHG estimates and the average SC–GHG with 3-percent discount rate for the 2021 interim SC–GHG estimates.[12]

Table I.5 presents the total estimated monetized benefits and costs associated with the adopted standard, expressed in terms of annualized values. The results under the primary estimates are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced NO_X and SO_2 emissions, and either the 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards adopted in this rule is $71 million per year in increased equipment costs, while the estimated annual benefits are $210 million in reduced equipment operating costs, $222 million per year in climate benefits (using the 2023 SC–GHG estimates) or $64 million per year in climate benefits (using the 2021 interim SC–GHG estimates), and $90 million in health benefits. In this case, the net benefit would amount to $452 million per year (using the 2023 SC–GHG estimates) or $294 million per year (using the 2021 interim SC–GHG estimates).

Using a 3-percent discount rate for consumer benefits and costs and health benefits from reduced NO_X and SO_2 emissions, and either the 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards is $68 million per year in increased equipment costs, while the estimated annual benefits are $265 million in reduced operating costs, $222 million in climate benefits (using the 2023 SC–GHG estimates) or $64 million in climate benefits (using the 2021 interim SC–GHG estimates), and $126 million in health benefits. In this case, the net benefit would amount to $545 million per year (using the 2023 SC–GHG estimates) or $387 million per year (using the 2021 interim SC–GHG estimates).

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[11] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2024, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2020 or 2030), and then discounted the present value from each year to 2024. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

[12] DOE notes that using consumption-based discount rates (*e.g.,* 2 or 3 percent) is appropriate when discounting the value of climate impacts. Combining climate effects discounted at an appropriate consumption-based discount rate with other costs and benefits discounted at a capital-based rate (*i.e.,* 7 percent) is reasonable because of the different nature of the types of benefits being measured.

Table I.5 Annualized Benefits and Costs of the Adopted Energy Conservation Standards for CRE at TSL 3 Shipped During the Period 2029–2058

	Million 2023$/year		
	Primary Estimate	Low-Net-Benefits Estimate	High-Net-Benefits Estimate
3% discount rate			
Consumer Operating Cost Savings	265	254	278
Climate Benefits* (2023 SC-GHG)	222	221	228
Climate Benefits* (2021 interim SC-GHG estimates)	64.2	63.8	65.8
Health Benefits**	126	125	129
Total Benefits† (2023 SC-GHG estimates)	613	600	634
Total Benefits† (2021 interim SC-GHG estimates)	455	443	472
Consumer Incremental Equipment Costs‡	68	108	69
Net Benefits (2023 SC-GHG estimates)	545	492	565
Net Benefits (2021 interim SC-GHG estimates)	387	335	403
Change in Producer Cash Flow (INPV)‡‡	(8) – (5)	(8) – (5)	(8) – (5)
7% discount rate			
Consumer Operating Cost Savings	210	202	220
Climate Benefits* (2023 SC-GHG)	222	221	228
Climate Benefits* (2021 interim SC-GHG estimates)	64.2	63.8	65.8
Health Benefits**	90	90	92
Total Benefits† (2023 SC-GHG estimates)	523	513	540
Total Benefits† (2021 interim SC-GHG estimates)	365	356	378
Consumer Incremental Equipment Costs	71	107	72
Net Benefits (2023 SC-GHG estimates)	452	406	468
Net Benefits (2021 interim SC-GHG estimates)	294	250	306
Change in Producer Cash Flow (INPV)‡‡	(8) – (5)	(8) – (5)	(8) – (5)

Note: These results include consumer, climate, and health benefits that accrue after 2058 from the equipment shipped during the period 2029−2058. The Primary, Low-Net-Benefits, and High-Net-Benefits Estimates utilize projections of energy prices from the *AEO2023* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a price decline rate (applicable to LED lighting and electronics in variable speed compressors) in the Primary and High-Net-Benefits Estimates, and no price-decline for the Low-Net-Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.
* Climate benefits are calculated using different estimates of the global SC-GHG (*see* section IV.L of this document). Climate benefits are estimated using two separate sets of estimates of the social cost for each greenhouse gas, an updated set published in 2023 by the Environmental Protection Agency (EPA) ("2023 SC-GHG") and the interim set of estimates used in the NOPR which were published in 2021 by the Interagency Working Group on the SC-GHG (IWG) ("2021 Interim SC-GHG") (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 2 percent near-term Ramsey discount rate are

shown for the 2023 SC-GHG estimates, and the climate benefits associated with the average SC-GHG at a 3 percent discount rate are shown for the 2021 interim SC-GHG estimates.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. Table 5 of the EPA's *Estimating the Benefit per Ton of Reducing PM2.5 Precursors from 21 Sectors* TSD provides a summary of the health impact endpoints quantified in the analysis. See section IV.L of this document for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC-GHG with 2-percent near-term Ramsey discount rate for the 2023 SC-GHG estimates and the average SC-GHG with 3-percent discount rate for the 2021 interim SC-GHG estimates.

‡‡ Operating Cost Savings are calculated based on the life-cycle cost analysis and national impact analysis as discussed in detail below. See sections IV.F and IV.H of this document. DOE's national impacts analysis includes all impacts (both costs and benefits) along the distribution chain beginning with the increased costs to the manufacturer to manufacture the product and ending with the increase in price experienced by the consumer. DOE also separately conducts a detailed analysis on the impacts on manufacturers (*i.e.*, MIA). See section IV.J of this document. In the detailed MIA, DOE models manufacturers' pricing decisions based on assumptions regarding investments, conversion costs, cash flow, and margins. The MIA produces a range of impacts, which is the rule's expected impact on the INPV. The change in INPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. The annualized change in INPV is calculated using the industry weighted-average cost of capital value of 10.0 percent that is estimated in the MIA (see chapter 12 of the final rule TSD for a complete description of the industry weighted-average cost of capital). For CRE, the annualized change in INPV ranges from -$8.2 million to -$5.3 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. See section V.C of this document. DOE is presenting the range of impacts to the INPV under two markup manufacturer scenarios: the preservation-of-gross margin scenario, which is the manufacturer markup scenario used in the calculation of consumer operating cost savings in this table; and the preservation-of-operating-profit scenario, where DOE assumed manufacturers would not be able to increase per-unit operating profit in proportion to increases in manufacturer production costs. DOE includes the range of estimated annualized change in INPV in the above table, drawing on the MIA explained further in section IV.J of this document to provide additional context for assessing the estimated impacts of this final rule to society, including potential changes in production and consumption, which is consistent with OMB's Circular A-4 and E.O. 12866. If DOE were to include the INPV into the annualized net benefit calculation using the 2023 SC-GHG estimates for this final rule, the annualized net benefits would range from $537 million to $540 million at 3-percent discount rate and would range from $444 million to $447 million at 7-percent discount rate.

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DOE's analysis of the national impacts of the adopted standards is described in sections IV.H, IV.K, and IV.L of this document.

D. Conclusion

DOE concludes that the standards adopted in this final rule represent the maximum improvement in energy efficiency that is technologically feasible and economically justified and would result in the significant conservation of energy. Specifically, with regards to technological feasibility, design options used to achieve these standard levels are already commercially available for all equipment classes covered by this final rule. As for economic justification, DOE's analysis shows that the benefits of the standards exceed, to a great extent, the burdens of the standards.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, and a 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for GHG social costs, the estimated cost of the standards for CRE is $71 million per year in increased equipment costs, while the estimated annual benefits are $210 million in reduced equipment operating costs, $222 million in climate benefits (using the 2023 SC–GHG estimates) or $64 million in climate benefits (using the 2021 interim SC–GHG estimates), and $90 million in health benefits. The net benefit amounts to $452 million per year (using the 2023 SC–GHG estimates) or $294 million per year (using the 2021 interim SC–GHG estimates). DOE notes that the net benefits are substantial even in the absence of the climate benefits,[13] and DOE would adopt the same standards in the absence of such benefits.

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[14] For example, some covered equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these equipment on the energy infrastructure can be more pronounced than the impacts of equipment with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

As previously mentioned, the standards are projected to result in estimated national energy savings (''NES'') of 1.11 quad full-fuel-cycle (''FFC''), the equivalent of the primary annual energy use of 7.4 million homes. Based on these findings, DOE has determined the energy savings from the

[13] The information on climate benefits is provided in compliance with Executive Order 12866.

[14] Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 86 FR 70892, 70901 (Dec. 13, 2021).

standard levels adopted in this final rule are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B). A more detailed discussion of the basis for these conclusions is contained in the remainder of this document and the accompanying technical support document (''TSD'').

II. Introduction

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

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317, as codified) Title III, Part C of EPCA,[15] added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. (42 U.S.C. 6311–6317) EPCA specifies a list of equipment that constitutes covered equipment (hereafter referred to as ''covered equipment'').[16] This equipment includes commercial refrigerators, freezers, and refrigerator-freezers, the subject of this document. (42 U.S.C. 6311(1)(E))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316(e)(1); 42 U.S.C. 6296(a), (b), and (d)).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(e)(2)–(3); 42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (42 U.S.C. 6316(e)(2)–(3); 42 U.S.C. 6297(d))

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of covered equipment. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered equipment must use the Federal test procedures as the basis for certifying to DOE that their equipment complies with the applicable energy conservation standards and as the basis for any representations regarding the energy use or energy efficiency of the equipment. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(s); 42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to evaluate whether a basic model complies with the applicable energy conservation standard(s). (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(s)). The DOE test procedures for CRE appear at 10 CFR 431, subpart C, appendix B (''appendix B'').

EPCA prescribed energy conservation standards for CRE (42 U.S.C. 6313(c)) and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6313(c)(6)) Not later than six years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination (''NOPD'') that standards for the equipment do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(m)(1)) DOE must make the analysis on which a NOPD or NOPR is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(m)(2)) Not later than two years after a NOPR is issued, DOE must publish a final rule amending the energy conservation standard for the equipment. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(m)(3)(A))

DOE must follow specific statutory criteria for prescribing new or amended standards for covered equipment, including CRE. Any new or amended standard for covered equipment must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy (''Secretary'') determines is technologically feasible and economically justified. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(3)(B))

Moreover, DOE may not prescribe a standard if: (1) for certain equipment, including CRE, no test procedure has been established for the product; or (2) DOE determines by rule that the establishment of such standard will not result in significant conservation of energy (or, for certain products, water), or is not technologically feasible or economically justified. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

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

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

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

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

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

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing equipment complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(iii))

[15] As noted previously, for editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[16] ''Covered equipment'' means one of the following types of industrial equipment: Electric motors and pumps; small commercial package air-conditioning and heating equipment; large commercial package air-conditioning and heating equipment; very large commercial package air-conditioning and heating equipment; commercial refrigerators, freezers, and refrigerator-freezers; automatic commercial ice makers; walk-in coolers and walk-in freezers; commercial clothes washers; packaged terminal air conditioners and packaged terminal heat pumps; warm air furnaces and packaged boilers; and storage water heaters, instantaneous water heaters, and unfired hot water storage tanks. (42 U.S.C. 6311(1)(A)–(K))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of covered equipment. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered equipment type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for covered equipment that has two or more subcategories. A rule prescribing an energy conservation standard for a type (or class) of equipment must specify a different standard level for a type or class of equipment that has the same function or intended use if DOE determines that equipment within such group (A) consumes a different kind of energy from that consumed by other covered equipment within such type (or class); or (B) has a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of equipment, DOE considers such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. (*Id.*) Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(q)(2))

DOE is publishing this final rule pursuant to the six-year-lookback review requirement in EPCA described herein.

B. Background

1. Current Standards

DOE most recently completed a review of its CRE standards in a final rule published in the **Federal Register** on March 28, 2014 (''March 2014 Final Rule''), through which DOE prescribed the current energy conservation standards for CRE manufactured on and after March 27, 2017. 79 FR 17725. These standards are set forth in DOE's regulations at 10 CFR 431.66(e) and are shown in table II.1.

For CRE with two or more compartments (*i.e.,* hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers), 10 CFR 431.66(e)(2) specifies that the maximum daily energy consumption for each model shall be the sum of the applicable standard for each of the compartments, as specified in 10 CFR 431.66(e)(1). For wedge cases, 10 CFR 431.66(e)(3) specifies instructions to comply with the applicable standards specified in 10 CFR 431.66(e)(1). Certain exclusions to the standards at 10 CFR 431.66(e)(1) are specified at 10 CFR 431.66(f).

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Table II.1 Federal Energy Efficiency Standards for CRE

Condensing Unit Configuration	Equipment Family	Rating Temperature (°F)	Operating Temperature (°F)	Equipment Class Designation*	Maximum Daily Energy Consumption (kWh/day)
Remote Condensing (RC)	Vertical Open (VOP)	38.0 (M)	≥ 32.0	VOP.RC.M	0.64 x TDA + 4.07
		0.0 (L)	< 32.0	VOP.RC.L	2.2 x TDA + 6.85
		-15.0 (I)	≤ -5.0	VOP.RC.I	2.79 x TDA + 8.7
	Semivertical Open (SVO)	38.0 (M)	≥ 32.0	SVO.RC.M	0.66 x TDA + 3.18
		0.0 (L)	< 32.0	SVO.RC.L	2.2 x TDA + 6.85
		-15.0 (I)	≤ -5.0	SVO.RC.I	2.79 x TDA + 8.7
	Horizontal Open (HZO)	38.0 (M)	≥ 32.0	HZO.RC.M	0.35 x TDA + 2.88
		0.0 (L)	< 32.0	HZO.RC.L	0.55 x TDA + 6.88
		-15.0 (I)	≤ -5.0	HZO.RC.I	0.7 x TDA + 8.74
	Vertical Closed Transparent (VCT)	38.0 (M)	≥ 32.0	VCT.RC.M	0.15 x TDA + 1.95
		0.0 (L)	< 32.0	VCT.RC.L	0.49 x TDA + 2.61
		-15.0 (I)	≤ -5.0	VCT.RC.I	0.58 x TDA + 3.05
	Horizontal Closed Transparent (HCT)	38.0 (M)	≥ 32.0	HCT.RC.M	0.16 x TDA + 0.13
		0.0 (L)	< 32.0	HCT.RC.L	0.34 x TDA + 0.26
		-15.0 (I)	≤ -5.0	HCT.RC.I	0.4 x TDA + 0.31
	Vertical Closed Solid (VCS)	38.0 (M)	≥ 32.0	VCS.RC.M	0.1 x V + 0.26
		0.0 (L)	< 32.0	VCS.RC.L	0.21 x V + 0.54
		-15.0 (I)	≤ -5.0	VCS.RC.I	0.25 x V + 0.63
	Horizontal Closed Solid (HCS)	38.0 (M)	≥ 32.0	HCS.RC.M	0.1 x V + 0.26
		0.0 (L)	< 32.0	HCS.RC.L	0.21 x V + 0.54
		-15.0 (I)	≤ -5.0	HCS.RC.I	0.25 x V + 0.63
	Service Over Counter (SOC)	38.0 (M)	≥ 32.0	SOC.RC.M	0.44 x TDA + 0.11
		0.0 (L)	< 32.0	SOC.RC.L	0.93 x TDA + 0.22
		-15.0 (I)	≤ -5.0	SOC.RC.I	1.09 x TDA + 0.26
Self-Contained (SC)	Vertical Open (VOP)	38.0 (M)	≥ 32.0	VOP.SC.M	1.69 x TDA + 4.71
		0.0 (L)	< 32.0	VOP.SC.L	4.25 x TDA + 11.82
		-15.0 (I)	≤ -5.0	VOP.SC.I	5.4 x TDA + 15.02
	Semivertical Open (SVO)	38.0 (M)	≥ 32.0	SVO.SC.M	1.7 x TDA + 4.59
		0.0 (L)	< 32.0	SVO.SC.L	4.26 x TDA + 11.51
		-15.0 (I)	≤ -5.0	SVO.SC.I	5.41 x TDA + 14.63
	Horizontal Open (HZO)	38.0 (M)	≥ 32.0	HZO.SC.M	0.72 x TDA + 5.55
		0.0 (L)	< 32.0	HZO.SC.L	1.9 x TDA + 7.08
		-15.0 (I)	≤ -5.0	HZO.SC.I	2.42 x TDA + 9
	Vertical Closed Transparent (VCT)	38.0 (M)	≥ 32.0	VCT.SC.M	0.1 x V + 0.86
		0.0 (L)	< 32.0	VCT.SC.L	0.29 x V + 2.95
		-15.0 (I)	≤ -5.0	VCT.SC.I	0.62 x TDA + 3.29
	Vertical Closed Solid (VCS)	38.0 (M)	≥ 32.0	VCS.SC.M	0.05 x V + 1.36
		0.0 (L)	< 32.0	VCS.SC.L	0.22 x V + 1.38
		-15.0 (I)	≤ -5.0	VCS.SC.I	0.34 x V + 0.88
	Horizontal Closed Transparent (HCT)	38.0 (M)	≥ 32.0	HCT.SC.M	0.06 x V + 0.37
		0.0 (L)	< 32.0	HCT.SC.L	0.08 x V + 1.23
		-15.0 (I)	≤ -5.0	HCT.SC.I	0.56 x TDA + 0.43
	Horizontal Closed Solid (HCS)	38.0 (M)	≥ 32.0	HCS.SC.M	0.05 x V + 0.91
		0.0 (L)	< 32.0	HCS.SC.L	0.06 x V + 1.12
		-15.0 (I)	≤ -5.0	HCS.SC.I	0.34 x V + 0.88
	Service Over Counter (SOC)	38.0 (M)	≥ 32.0	SOC.SC.M	0.52 x TDA + 1
		0.0 (L)	< 32.0	SOC.SC.L	1.1 x TDA + 2.1
		-15.0 (I)	≤ -5.0	SOC.SC.I	1.53 x TDA + 0.36
	Pull-Down (PD)	38.0 (M)	≥ 32.0	PD.SC.M	0.11 x V + 0.81

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2. History of Standards Rulemaking for Commercial Refrigerators, Freezers, and Refrigerator-Freezers

On July 16, 2021, DOE published a request for information (''RFI'') in the **Federal Register** to undertake an early assessment review for amended energy conservation standards for CRE to determine whether to amend applicable energy conservation standards for this equipment (''July 2021 RFI''). 86 FR 37708. Specifically, through the published notice and RFI, DOE sought data and information that could enable the agency to determine whether amended energy conservation standards would: (1) result in a significant savings of energy, (2) be technologically feasible, and (3) be economically justified. *Id.*

On June 28, 2022, DOE published in the **Federal Register** a notification of the availability of a preliminary TSD for CRE (''June 2022 Preliminary Analysis''). 87 FR 38296. In that notification, DOE sought comment on the analytical framework, models, and tools that DOE used to evaluate potential standards for CRE, the results of preliminary analyses performed, and the potential energy conservation standard levels derived from these analyses, which DOE presented in the accompanying preliminary TSD (''June 2022 Preliminary TSD'').[17] *Id.* DOE held a public meeting related to the June 2022 Preliminary Analysis on August 8, 2022.

On October 10, 2023, DOE published in the **Federal Register** a NOPR to establish and amend energy conservation standards for CRE (''October 2023 NOPR''). 88 FR 70196. DOE also sought comment on the analytical framework, models, and tools that DOE used to evaluate the proposed standards for CRE, the results of the NOPR analyses performed, and the proposed new and amended energy conservation standard levels derived from these analyses, which DOE presented in the accompanying NOPR TSD (''October 2023 NOPR TSD'').[18] *Id.* DOE held a public meeting related to the October 2023 NOPR on November 7, 2023 (hereafter, the ''November 2023 Public Meeting'').

DOE received comments in response to the October 2023 NOPR from the interested parties listed in table II.2.

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[17] The June 2022 Preliminary TSD is available in the docket for this rulemaking at *www.regulations.gov/document/EERE-2017-BT-STD-0007-0013.*

[18] The October 2023 NOPR TSD is available in the docket for this rulemaking at *www.regulations.gov/document/EERE-2017-BT-STD-0007-0051.*

Table II.2 List of Commenters with Written Submissions in Response to the October 2023 NOPR

Commenter(s)	Abbreviation	Comment No. in the Docket	Commenter Type
True Manufacturing*	True	72	Manufacturer
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Natural Resources Defense Council	ASAP *et al.*	79	Efficiency Organizations
National Automatic Merchandising Association	NAMA	85	Trade Association
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	81	Trade Association
ITW Food Equipment Group, - Traulsen **	ITW	82	Manufacturer
North American Association of Food Equipment Manufacturers	NAFEM	83	Trade Association
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison; collectively, the California Investor Owned Utilities	CA IOUs	84	Utility
Continental Refrigerator**	Continental	86	Manufacturer
Delfield Company	Delfield	71	Manufacturer
Due North	Due North	87	Manufacturer
Food Marketing Institute, National Association of Convenience Stores	FMI and NACS	78	Trade Associations
Hillphoenix**	Hillphoenix	77	Manufacturer
Hoshizaki America	Hoshizaki	76	Manufacturer
Hussmann Corporation	Hussmann	80	Manufacturer
Michael Ravnitzky	Ravnitzky	57	Individual
Kirby Foods, INC.	Kirby	66	Grocery Store Business
Northwest Energy Efficiency Alliance, Northwest Power and Conservation Council	NEEA and NPCC	89	Efficiency Organizations
New York State Energy Research and Development Authority	NYSERDA	88	Efficiency Organization
Structural Concepts Corporation	SCC	74	Manufacturer
StoreMasters, LLC	Storemasters	68	Supermarket Architecture Design Firm
ITW-Food Equipment Group	ITW	82	Manufacturer
Zero Zone, Inc.	Zero Zone	75	Manufacturer
Zach Killin	Killin	59	Individual
Anonymous*	Individual Commenter	70	Individual
Anonymous*	Individual Commenter	58	Individual
Anonymous*	Individual Commenter	73	Individual

* These commenters submitted confidential comments

** These commenters submitted confidential comments in addition to public comments

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To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the

November 2023 Public Meeting, DOE cites the written comments throughout this document. Any oral comments provided during the November 2023 Public Meeting that are not substantively addressed by written comments are summarized and cited separately throughout this document.

On August 28, 2024, DOE published in the **Federal Register** a notice of data availability (''NODA'') to provide updated analytical results that reflect updates to the analysis that DOE is considering based on feedback received in response to the October 2023 NOPR (''August 2024 NODA''). 89 FR 68788. DOE also sought comment, data, and information regarding the updated analyses. *Id.*

DOE received comments in response to the August 2024 NODA from the interested parties listed in table II.3.

Table II.3 List of Commenters with Written Submissions in Response to the August 2024 NODA

Commenter(s)	Abbreviation	Comment No. in the Docket	Commenter Type
Stephanie Bice	Bice	95	Individual
Gas Analytics and Advocacy Services	GAAS	96	Advocacy Group
Benjamin Zycher	Zycher	97	Individual
True Manufacturing*	True	98	Manufacturer
Delfield Company	Delfield	99	Manufacturer
James Broughel	Broughel	100	Individual
North American Association of Food Equipment Manufacturers	NAFEM	101	Trade Association
Competitive Enterprise Institute	CEI	102	Advocacy Group
National Association of Home Builders	NAHB	103	Trade Association
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	104	Trade Association
Anonymous*	Individual Commenter	105	Individual
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Northwest Energy Efficiency Alliance	ASAP *et al.*	106	Efficiency Organizations
Continental Refrigerator	Continental	107	Manufacturer
Hussmann	Hussmann	108	Manufacturer
The American Lighting Association (ALA); Association of Home Appliance Manufacturers (AHAM); National Electrical Manufacturers Association (NEMA); North American Association of Food Equipment Manufacturers (NAFEM); National Automatic Merchandising Association (NAMA); Plumbing Manufacturers International (PMI); and Power Tool Institute (PTI)	ALA *et al.*	109	Trade Association
Hillphoenix**	Hillphoenix	110	Manufacturer
ITW Food Equipment Group, - Traulsen	ITW	111	Manufacturer
National Automatic Merchandising Association**	NAMA	112	Trade Association
California Investor-Owned Utilities	CA IOUs	113	Energy Utilities
Zero Zone	Zero Zone	114	Manufacturer
US Chamber of Commerce (USCC), American Coke and Coal Chemicals Institute (ACCI), American Gas	USCC et al.	115	Trade Associations

Association (AGA), American Petroleum Institute (API), American Public Gas Association (APGA), Interstate National Gas Association of America (INGAA), National Automatic Merchandising Association (NAMA), National Rural Electric Cooperative Association (NRECA), North American Association of Food Equipment Manufacturers (NAFEM)			
Joseph Lepak	Lepak	116	Individual
Joseph Lepak	Lepak	117	Individual

* The commenter submitted only confidential comments

** These commenters submitted confidential comments in addition to public comments

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[19]

3. Applicability of This Final Rule to Large-Capacity CRE

As discussed in section I of this document, DOE is establishing and amending standards in this final rule for the classes of equipment shown in table I.1. This includes all classes of CRE currently subject to energy conservation standards, and DOE is additionally establishing standards for chef bases or griddle stands. However, DOE is not, at this time, amending standards for large-capacity CRE ranges presented in table IV. for the VOP.SC.M, SVO.SC.M, HZO.SC.L, SOC.SC.M, VCT.SC.M, VCT.SC.L, and VCS.SC.L equipment classes. Large-capacity CRE in these classes would remain subject to the current energy conservation standards applicable to those classes for which compliance was required beginning on March 27, 2017.

DOE has summarized the comments it received in response to the October 2023 NOPR and August 2024 NODA specific to the large-capacity analysis as follows. Zero Zone, ASAP *et. al.,* AHRI, and Hussmann commented in support of DOE's decision to separate self-contained units into two groups, and of DOE's updated assumption that larger self-contained equipment will use an A2L refrigerant, such as R–454C, when the refrigeration cooling load of the case is more than can be achieved using an allowable R–290 charge size. (Zero Zone, No. 114 at p. 1, (ASAP *et al.,* No. 106 at pp. 1–2, AHRI, No. 104 at p. 9, Hussmann, No. 108 at p. 3) Hussmann and AHRI additionally agreed with DOE's finding that compressors using R–454C and R–455A have performance similar to compressors with refrigerants already in use (*e.g.,* R–404A) in larger equipment. (Hussmann, No. 108 at p. 3, AHRI, No. 104 at p. 9) Hillphoenix agreed with DOE's A2L compressor cost assumptions. (Hillphoenix, No. 110 at p. 3). Hussmann, AHRI, and Continental disagreed with DOE's A2L compressor cost assumptions and stated that the price of an A2L compressor is similar to an R–404A compressor at the same cooling capacity. (Hussmann, No. 108 at p. 3; AHRI, No. 104 at p. 9; Continental, No. 107 at p. 2). Hussmann and Due North commented with concerns that large volume units would be susceptible to discontinuation as they face some of the most severe proposed energy use reductions. (Hussmann, No. 80 at p. 7, Due North, No. 87, at pp. 1–2) The CA IOUs recommended that DOE reconsider how it defines 'large' and 'non-large' capacity equipment, and that DOE reconsider its assumption that all 'large' units will require A2L refrigerants. (CA IOUs, No. 113 at p. 4)

For all comments received in response to the October 2023 NOPR and August 2024 NODA, DOE appreciates the comments and continues to analyze the large-capacity ranges presented in table IV.5 for the VOP.SC.M, SVO.SC.M, HZO.SC.L, SOC.SC.M, VCT.SC.M, VCT.SC.L, and VCS.SC.L equipment classes.

Further, DOE is not addressing nor discussing any analytical methodologies or results for the large-capacity ranges of these equipment classes in this document as DOE continues to consider the comments submitted in response to the October 2023 NOPR and August 2024 NODA.

III. General Discussion

DOE developed this final rule after considering all oral and written comments, data, and information from interested parties that represent a variety of interests. This document addresses issues raised by these commenters.

A. General Comments

This section summarizes general comments received from interested parties regarding rulemaking timing and process.

1. General Support

In response to the October 2023 NOPR, Ravnitzky, ASAP *et al.,* NYSERDA, NEEA and NWPCC, and Killin supported the October 2023 NOPR, citing large national energy savings and considerable savings for businesses. (Ravnitzky, No. 57 at p. 1; ASAP *et al.,* No. 79 at p. 1; NYSERDA, No. 88 at pp. 1–2; NEEA and NWPCC, No. 89 at p. 3; Killin, No. 59 at p. 1) Ravnitzky commented that the proposed rule would have significant environmental and public health benefits and that the net economic benefits for consumers and manufacturers would outweigh the costs of complying with the proposed rule. (Ravnitzky, No. 57 at p. 1)

In response to the October 2023 NOPR, Ravnitzky also commented that the rule creates a level playing field for manufacturers by harmonizing standards across different types and classes of CRE. (Ravnitzky, No. 57 at p. 1) Ravnitzky urged DOE to finalize and implement the rule as soon as possible,

[19] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for CRE. (Docket NO. EERE-2017-BT-STD-0007, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

while also continuing to monitor and evaluate its impacts and outcomes and to seek feedback and input from stakeholders and experts. (*Id.* at p. 5)

In response to the October 2023 NOPR, NEEA and NWPCC supported the proposal of TSL 5 as it represents the highest standard level that is technically feasible and economically justified and provides a large amount of cost-effective energy savings for the Nation. (NEEA and NWPCC, No. 89 at p. 3)

In response to the August 2024 NODA, ASAP *et al.* supported DOE's updates to the analysis presented in the NODA and believe the updated analysis provides a strong basis for finalizing amended CRE standards, and encourages the adoption of the highest efficiency levels (''ELs'') that have positive life-cycle cost savings. (ASAP *et al.,* No. 106 at p. 1) Based on DOE's updated analysis for the NODA, *ASAP et al.* estimated that amended standards meeting this criteria would yield about 1.5 quads of energy savings and up to about $4.5 billion in net present value savings for purchasers based on DOE's updated analysis for the August 2024 NODA. (*Id.*)

An anonymous commenter expressed general support for adopting the max-tech level. (Anonymous, No. 105 at p. 1)

Lepak commented in support of the rulemaking because, while it may increase costs for consumers, without these regulations innovation would not occur and consumers rely on regulations like this one to ensure that they have access to quality, energy efficient products. (Lepak, No. 116, at p. 1; Lepak, No. 117, at p. 1) Lepak added that energy efficiency measures help the county to meet its climate goals. (*Id.*)

2. General Opposition

DOE also received comments, in response to the October 2023 NOPR and the August 2024 NODA, outlining numerous concerns with the proposed new and amended energy conservation standards. These included concerns about other cumulative regulatory changes the industry is currently addressing, including a final rule published by the EPA regarding refrigerant prohibitions in certain equipment, leading to requests to delay the rulemaking and/or extend the compliance date of the proposed standards; questions about the economic justification; technical feasibility and cost-effectiveness of the proposed standards; potential inaccuracies in the supporting analysis; potential issues regarding food safe temperatures; and concerns with certain rulemaking processes, including the public comment period. These comments are included and discussed throughout section III of this document.

a. Proposed Compliance Date

In the October 2023 NOPR, DOE estimated the publication of a final rule regarding amended energy conservation standards for CRE in the second half of 2024; therefore, for purposes of the October 2023 NOPR, DOE modeled a 3-year compliance period and 2028 as the first full year of compliance with any amended standards, consistent with the requirements of EPCA (*see* 42 U.S.C. 6313(c)(6)(C)(i)). 88 FR 70196, 70237.

In response to the October 2023 NOPR, FMI and NACS, NAFEM, ITW, and NAMA recommended DOE extend its compliance deadline to 5 years due to the requirements of the AIM Act and the significant investment and redesign associated with the ongoing EPA rulemakings. (FMI and NACS, No. 78 at p. 2; NAFEM, No. 83 at p. 2; ITW, No. 82 at p. 6; NAMA, No. 85 at p. 34)

In response to the August 2024 NODA, NAFEM, NAMA, and Hillphoenix commented in support of additional time for compliance, and suggested a 5 year compliance period. (NAFEM, No. 101 at pp. 4–5; NAMA, No. 112 at p. 3; Hillphoenix, No. 110 at p. 12) In response to the August 2024 NODA, Continental stated that adopting standards with a 3 year compliance period would force them to exit the market for many equipment configurations. (Continental, No. 107 at p. 3) Hoshizaki commented that more than 100 of its CRE models would be affected by the energy conservation standards proposed in the October 2023 NOPR, and corresponding UL safety and NSF sanitation testing will be difficult or impossible to complete within the 3-year compliance period. (Hoshizaki, No. 76 at pp. 6–7)

In response to the October 2023 NOPR, NAMA recommended that DOE increase the time of compliance to recoup investments and alleviate the stress of staffing, supply chain issues, and platform changes to use low GWP refrigerants. (*Id.* at p. 18) NAMA suggested that DOE allow the industry 2–3 years after the effective date of EPA's final rule published in the **Federal Register** on October 24, 2023, to address HFCs through the AIM Act (''October 2023 EPA Final Rule''; 88 FR 73098) to absorb the costs of the refrigerant transition before redesigning their products to the next CRE energy conservation standards. (*Id.* at pp. 19, 27)

DOE acknowledges the concerns raised by manufacturers regarding the cumulative regulatory burden from the October 2023 EPA Final Rule and DOE energy conservation standards rulemakings, which is compounded by changes to Underwriters Laboratories (''UL'') safety standards for the equipment covered by this rulemaking. DOE notes that it has some flexibility under EPCA to delay the effective date of new and amended standards: if the Secretary determines that a 3-year period is inadequate, the Secretary may establish an effective date that would apply to CRE on or after a date that is not later than 5 years after the final rule is published in the **Federal Register**. (See 42 U.S.C. 6313(c)(6)(C)) Based on stakeholder comments and DOE's assessment of the overlapping Federal refrigerant regulations and recent changes to UL safety standards for CRE, DOE is extending the compliance period from the 3-years analyzed in the October 2023 NOPR (modeled as a 2028 compliance year) to 4-years (modeled as a 2029 compliance year) for this final rule.

Generally, DOE understands that aligning compliance dates to avoid multiple successive redesigns can help to reduce cumulative regulatory burden. However, stakeholder comments indicate and make clear that the rulemaking timelines and compliance periods for DOE and EPA regulations make it challenging to redesign and retest CRE simultaneously to meet both the October 2023 EPA Final Rule and new and amended DOE standards. As discussed in more detail in section IV.J.3.c of this document, manufacturers indicated that testing facilities and engineering resources are currently fully consumed by the transition to low-GWP refrigerants and new UL safety standards. Many manufacturers expressed concern that third-party laboratories already have backlogs and are experiencing delays, meaning that requiring new and amended standards for CRE within a short time period could exacerbate the issue. DOE has determined that a 4-year compliance period to redesign CRE to meet the adopted standards will help alleviate manufacturers' concerns about engineering and laboratory resource constraints. Furthermore, the longer compliance period will help mitigate cumulative regulatory burden by allowing manufacturers more flexibility to spread investments across 4 years instead of 3 years. Manufacturers will also have more time to recoup any investments made to redesign CRE to comply with the October 2023 EPA Final Rule as compared to a 3-year compliance period.

Regarding manufacturers' requests to extend the compliance period to 5 years,

DOE notes that much of the CRE market has already transitioned to low-GWP refrigerants and the portion of the market that has not transitioned will likely complete the conversion to low-GWP refrigerants 2 to 4 years prior to when compliance is required for new and amended energy conservation standards. Furthermore, as compared to the October 2023 NOPR, DOE is adopting generally less stringent efficiency levels in this final rule. As such, DOE expects that a 4-year compliance period (compliance with adopted standards required in 2029) provides industry sufficient time to redesign CRE to comply with new and amended standards.

In the notice of proposed rulemaking published in the **Federal Register** on December 15, 2022 (''December 2022 EPA NOPR''), EPA proposed a January 1, 2025, compliance date for the refrigeration categories that apply to CRE. 87 FR 76738, 76773–76774 (Dec. 15, 2022). For self-contained CRE, which account for approximately 86 percent of industry CRE shipments covered by this final rule, the October 2023 EPA Final Rule finalized the compliance date as proposed. 88 FR 73098, 73150. For remote-condensing CRE, which account for the remaining 14 percent of industry CRE shipments covered by this final rule, the October 2023 EPA Final Rule finalized a compliance date of January 1, 2026 or January 1, 2027, depending on the category. *Id.* As discussed in the October 2023 EPA Final Rule, EPA considered updates to UL standard 60335–2–89 and the subsequent incorporation of those updates by electing to extend the compliance dates for many subsectors in retail food refrigeration, including remote-condensing CRE. However, EPA determined that self-contained CRE would not require a delayed compliance date because low-GWP refrigerants such as R–290 have been used in self-contained CRE applications for years, and, therefore, the industry is much further along in the transition to low-GWP refrigerants compared to other refrigeration subsectors. *Id.* at 88 FR 73154. DOE agrees with EPA and notes that it has observed, and manufacturers concur,[20] that a significant number of CRE models have already been transitioned to refrigerants that comply with the October 2023 EPA Final Rule. For example, 93 percent of CRE models currently rated to ENERGY STAR®'s CRE database use either R–290 or R–600a.[21] This is supported by NAFEM members and CRE industry statements captured in the comments from NAFEM, which stated that ''most self-contained CRE today, in the commercial bar space, already uses alternate refrigerants, (almost exclusively R–290),'' and ''we already made the change to R–290 from R–134a more than 5 years ago.'' (NAFEM, No. 83 at pp. 3–5) This demonstrates that data and technology are currently known and available for manufacturers to understand performance impacts of this refrigerant transition.

As previously mentioned, compared to the October 2023 NOPR, DOE is adopting generally less stringent efficiency levels (in terms of percent energy use below the analyzed baseline) for 22 out of the 28 directly analyzed equipment classes. DOE notes that there were several changes made to the analysis in response to comments and data submitted on the October 2023 NOPR and the August 2024 NODA that resulted in DOE adopting generally less stringent standards, including but not limited to, the updates made to single-speed and variable-speed compressors, screening out design options such as evaporator fan controls and microchannel condensers, and updated baseline design options. Due to these updates and other considerations detailed throughout this final rule, DOE is adopting generally less stringent standards than the standards proposed in the October 2023 NOPR. As such, DOE expects fewer CRE models would require redesign to meet the levels adopted in this final rule compared to the levels proposed in the October 2023 NOPR. For example, DOE estimated that approximately 11 percent of shipments would meet the proposed TSL in the October 2023 NOPR by the analyzed compliance date. Comparatively, DOE estimates that approximately 49 percent of shipments would meet the TSL adopted in this final rule by the analyzed compliance date. Furthermore, DOE expects that the investment and redesign effort required to meet the adopted standards would be lower since fewer models would require redesign at the adopted standard level.

As permitted under EPCA and discussed in the preceding paragraphs, DOE is extending the compliance period from the three years analyzed in the October 2023 NOPR (modeled as a 2028 compliance year) to four years (modeled as a 2029 compliance year) for this final rule. (See 42 U.S.C. 6313(c)(6)(C))

[20] See Storemasters, No. 68 at pp. 1–2.

[21] See *www.energystar.gov/productfinder/product/certified-commercial-refrigerators-and-freezers/results* (last accessed Oct. 23, 2024).

b. Proposed Standards

In response to the October 2023 NOPR, FMI and NACS commented that the proposed energy conservation standards are neither required nor justified under EPCA. (FMI and NACS, No. 78 at p. 2) FMI and NACS commented that DOE has not adequately demonstrated that these standards would be technologically feasible and cost-effective, adding that, in many cases, the proposed standards would require design elements and technology that is not economically justified or technically feasible. (*Id.*) FMI and NACS commented that DOE significantly underestimates the costs of compliance with the proposed rule and provided an example that one FMI member's analysis showed an increased case cost of 20–25 percent to comply with the proposed rule as well as more difficult and costly servicing. (FMI and NACS, No. 78 at p. 4). FMI and NACS commented that with more accurate cost and benefit information, it is likely that DOE's rebuttable payback period analysis will result in much longer payback periods. (*Id.*)

In response to the comments from FMI and NACS, DOE notes that for the proposed levels in the October 2023 NOPR, the analyzed cost increases were consistent with FMI and NACS' comment (*i.e.,* up to the 20 to 25 percent increase), thus it is not clear that there is a disconnect on technologies required to get to the proposed levels. DOE further notes that the finalized standard levels presented in this final rule (*i.e.,* TSL 3) are generally less stringent and the cost increases to attain the finalized levels are less, on average, than the levels proposed in the October 2023 NOPR and were determined to be cost-effective. DOE further notes that in its analysis, the servicing costs were set proportional to the equipment cost (*i.e.,* higher cost for more efficient equipment—see section IV.F.5 of this document and chapter 8 of the final rule TSD for more details on these costs).

An anonymous commenter stated that the cost benefits of the October 2023 NOPR are inflated by the assumption of social and health benefits, which are speculative, and added that higher costs from the October 2023 NOPR will render CRE unaffordable for consumers and industry. (Anonymous, No. 73 at p. 1)

In response to the anonymous commenter, DOE notes that the October 2023 NOPR stated that the estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining whether a

proposed standard level is economically justified. See 88 FR 70196, 70292.

In response to the August 2024 NODA, Bice commented that she opposes the October 2023 NOPR, citing concerns with the multitude of proposals being published by the DOE. (Bice, No. 92 at p. 1) Bice commented also that these proposals are adding burdensome energy conservation standards to products that Americans use on a regular basis. (*Id.*) Bice stated her belief that the proposed standards would increase production costs for manufacturers and retail prices for consumers and small businesses, costing millions of dollars with few long-term benefits. (*Id.*) Bice commented that past rules published by the DOE are an unnecessary overreach of the Federal government, and that these regulations limit consumer choice, drive up prices, and impose onerous regulations on American manufacturers, many of whom being small businesses. (*Id.*)

In response to Bice, as discussed in section II.A of this document, EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment; this equipment includes commercial refrigerators, freezers, and refrigerator-freezers. (42 U.S.C. 6291–6317, as codified; 42 U.S.C. 6311(1)(E)) EPCA also includes a lookback period which directs DOE to conduct future rulemakings to determine whether to amend standards not later than six years after the issuance of any final rule establishing or amending a standard. (42 U.S.C. 6313(c)(6); 42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(m)(1)) DOE notes that as compared to the October 2023 NOPR, DOE is extending the compliance period from the three years analyzed in the October 2023 NOPR to four years for this final rule, which would allow manufacturers an additional year to redesign equipment and comply with the new or amended standards. Additionally, as discussed in III.A.2.a of this document, DOE is adopting generally less stringent standards than what DOE proposed in the October 2023 NOPR. DOE discusses the benefits and burdens of each TSL considered in section V.C of this document. Regarding the impacts to small businesses, DOE analyzes the impacts to small business consumers in section V.B.1.b of this document and small business manufacturers in section VI.B of this document.

In response to the August 2024 NODA, Zycher commented that energy savings analyzed as a result of the proposed standards are about 2 tenths of one percent of the energy consumed in 2023 by the residential, commercial, and industrial sectors and are trivial. (Zycher, No. 97 at p. 3) Zycher further commented that, accordingly the reduction in GHG emissions and resulting decline in global temperatures are negligible. (*Id. at pp. 3–4*)

In response to Zycher's comment, DOE notes that CRE are one of many regulated products and equipment within DOE's authority to set efficiency standards, and that the appliance standards program has helped the United States avoid 2.6 billion tons of carbon dioxide emissions.[22] Additionally, DOE notes that the energy savings analyzed as a result of new and amended standards in this final rule are compared to the overall energy use of the CRE market, not the overall energy consumed by the residential, commercial, and industrial sectors.

In response to the October 2023 NOPR and the August 2024 NODA, commenters expressed concern regarding the stringency of proposed standards, requesting no-new standards or alternate levels, citing technological feasibility, and expressing concern about equipment elimination, as discussed in the following sections.

No-New-Standards

In response to the October 2023 NOPR and August 2024 NODA, Storemasters, Kirby, Continental, NAFEM, Hoshizaki, ITW, AHRI, NAMA, and Hussmann recommended that DOE issue a no-new-standards rule at this time. (Storemasters, No. 68 at p. 2; Kirby, No. 66 at p. 2; Continental, No. 86 at p. 7; NAFEM, No. 83 at p. 2; NAFEM, No. 101 at p. 5; Hoshizaki, No. 76 at p. 1; ITW, No. 82 at p. 1; AHRI, No. 81 at p. 5; NAMA, No. 112 at p. 3; Hussmann, No. 80 at p. 13)

In response to the August 2024 NODA, Continental stated that while the August 2024 NODA revises some analysis and provides support documents, it does not provide updated standards levels, and Continental could not adequately conclude whether the updated determinations are sufficient to establish proposed energy standards that are technologically feasible and economically justified. (Continental, No. 107 at p. 3) Continental stated its understanding that DOE has statutory obligations and a court mandate however requests DOE not rush into adopting more stringent standards, and leave new energy savings for future rulemakings. (*Id.*)

AHRI commented that no significant technologies have been developed since 2017 to bring about the additional energy efficiency that DOE expects in the October 2023 NOPR. (AHRI, No. 81 at p. 11) AHRI commented that a no-new-standards rule would allow time to collect data on products in the market, evaluate safety mitigation measures associated with the refrigerant transition, reduce the burden on manufacturers and end-users, and increase time for product re-design. (*Id.*)

In response to the October 2023 NOPR, ITW stated that a ''no new standards'' decision at this time would give the industry and DOE time to work together on analyzing the correct data and new data for the new categories for which DOE has proposed energy use multipliers. (ITW, No. 82 at p. 6)

In response to the October 2023 NOPR, notwithstanding Hussmann's comments regarding both a pause in the rulemaking and timing of the rulemaking, Hussmann commented that while it requests that DOE impose no new standards, the focus should not be on timing but rather on the proposed energy limits themselves being unachievable. (Hussmann, No. 80 at p. 13)

Hussmann commented that they are currently amending to the UL/CSA 60335–1 and 60335–2–89 standards, which consumes laboratory resources, space, and time. (Hussmann, No. 108 at p. 2). Hussmann asserted that this shift requires new design modifications and the addition of new components, which may take 1–3 years of laboratory time to fulfill. (*Id.*) Hussmann stated that this limits their ability to fulfill new DOE requirements. (*Id.*) Hussmann stated that there is significant benefit to all stakeholders, the retailers, as well as the consumer to abstain from additional DOE energy efficiency regulation at this time. (*Id.*)

In response to the August 2024 NODA Zycher commented that the CRE standards analyzed in the August 2024 NODA are flawed and should not be finalized. (Zycher, No. 97 at p. 10)

With regard to stakeholders' request for DOE to adopt a ''no-new-standards'' determination to allow industry additional time to analyze data related to the proposed energy use multipliers, DOE notes that manufacturers and other commenters were provided with an additional opportunity to provide feedback on the updated results presented in the August 2024 NODA, which offered manufacturers approximately eight months after the October 2023 NOPR comment period ended to analyze data related to the proposed energy use multipliers. In response to Continental's comment about not having a proposed standard

[22] See *www.energy.gov/eere/buildings/about-appliance-and-equipment-standards-program.*

level in the August 2024 NODA, DOE notes that while one specific standard level was not proposed in the August 2024 NODA, standard equations at each efficiency level were presented in the August 2024 NODA. The August 2024 NODA provided stakeholders an additional opportunity to comment on the revisions to the analysis from the October 2023 NOPR, and the revised relationships between design, cost, and efficiency that were the basis of DOE's analysis leading to the standards established and amended in this final rule. Furthermore, EPCA specifies that any new or amended energy conservation standard that DOE adopts for any type (or class) of covered equipment must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(A)) As discussed in section V.C of this document, DOE has determined that TSL 3 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified. However, DOE notes that, as discussed in section III.A.2.a of this document, DOE is extending the compliance period from the 3-years analyzed in the October 2023 NOPR to 4-years for this final rule to mitigate concerns of commenters about cumulative regulatory burden and associated engineering and laboratory resource constraints, which have been exacerbated by the ongoing refrigerant transition in response to the October 2023 EPA Final Rule and updated safety standards (*e.g.,* UL 60335–2–89).

Requested Alternate Levels

In response to the October 2023 NOPR, Continental commented that if a no-new-standards determination is not possible, DOE should publish new standards levels that align with the ENERGY STAR Product Specification for Commercial Refrigerators and Freezers Version 5.0, which will provide energy reductions at levels that have been substantially evaluated by stakeholders. (Continental, No. 86 at p. 7)

In response to the October 2023 NOPR and the August 2024 NODA, Delfield commented that, while it is reasonable for DOE to push regulations toward the ENERGY STAR version 5.0 levels,[23] in general, DOE should limit reductions to no more than 20 percent compared to 2017 DOE levels. (Delfield, No. 71 at p. 1; Delfield, No. 99 at p. 1)

DOE appreciates the feedback from Continental and Delfield, and notes that out of the 11 ESTAR equipment classes analyzed in this final rule, the amended standards for 8 classes are at similar or less stringent levels than ENERGY STAR version 5.0 levels. In addition, in this final rule, of the 49 equipment classes analyzed, 28 equipment classes did not have greater than 20 percent energy use reduction from the current standard, as suggested by Delfield, and 36 equipment classes did not have greater than 20 percent energy use reduction from the baseline analyzed in this final rule. However, DOE disagrees that all equipment classes should align with these comments. All results of this analysis are based on DOE's final rule analysis, which shows that for 22 equipment classes, energy conservation standards more stringent than ENERGY STAR or 20% reduction from the current standard are technologically feasible and economically justified. For the full list of cost-efficiency results, see chapter 5 of the final rule TSD.

In response to the August 2024 NODA, the CA IOUs commented that DOE should set standards at the highest EL with positive LCC savings for all equipment classes for the final rule. (CA IOUs, No. 113 at p. 6)

As discussed in section III.F of this document, the potential impacts to individual consumers such as the changes in LCC and PBP associated with new or amended standards is one aspect of the seven factors that DOE evaluates when determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) As discussed in section V.C of this document, DOE has determined that TSL 3 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified. DOE has determined that establishing standards at TSL 3 balances the benefits of the energy savings and impacts to consumers at TSL 3 with the potential burdens placed on CRE manufacturers. DOE notes that at TSL 3, affected purchasers for each CRE equipment class experience an average LCC savings ranging from $8 to $1,868 with a payback period ranging from 0.9 years to 7.0 years. Overall, approximately 91 percent of affected CRE purchasers would experience a net benefit or not be affected at TSL 3.

Technological Feasibility

In response to the October 2023 NOPR, Hoshizaki, ITW, SCC, and NAFEM commented that the proposal is not technologically feasible or economically justified, and that many technologies analyzed are already in use. (Hoshizaki, No. 76 at pp. 1, 3; ITW, No. 82 at p. 1; SCC, No. 74 at p. 1; NAFEM, No. 83 at p. 2)

Hoshizaki commented that the proposed energy standards would require over 30-percent reductions to meet the amended standards—VCS.SC.M, VCT.SC.M, VCS.SC.L, SOC.SC.M, and classifications with RT, PT, and RI doors. (Hoshizaki, No. 76 at p. 3)

In response to the October 2023 NOPR, Due North generally supported the October 2023 NOPR but expressed concern regarding the severe reductions of the proposed conservation standards to VCT.SC.L, VCT.SC.M, VOP.SC.M, VCT.SC.M.PT, and VCT.SC.M.SDPT equipment classes. (Due North, No. 87 at pp. 1–2) Due North commented that, based on its analysis, the proposed energy conservation standards would reduce the current threshold levels for VCT.SC.L by 19 percent, VCT.SC.M by 17–41 percent, depending on the unit refrigerated volume, and VOP.SC.M by 26 percent. (*Id.* at p. 1) Due North stated that these reductions are severe and hard to achieve using present energy-saving technologies such as variable-speed compressors, electronically commutated fan motors, adaptive defrosts, efficient light-emitting diode (''LED'') lighting, and smart controls. (*Id.*)

In response to the October 2023 NOPR, Hussmann stated that DOE's proposed energy limits, that are up to 70 percent less than the current DOE standard levels, are unattainable for Hussmann products. (Hussmann, No. 80 at p. 6) Hussmann additionally commented that other Hussmann models would be required to meet 20-to-40-percent drops in energy limits while already using electronically commutated motors (''ECMs''), LED lights, and optimized air curtains/doors and insulation, and, in the face of these unattainable limits, Hussmann would need to weigh the benefits between feasibility, increased cost, development time, and consumer interest with the decision to discontinue certain product lines entirely. (*Id.* at pp. 6–7)

In response to the October 2023 NOPR, Storemasters and FMI and NACS stated their concern with the proposed changes set forth in the October 2023 NOPR on the grounds that DOE has overestimated the energy efficiency benefits of its proposed rule because manufacturers may stop offering certain cases in order to comply with the proposed standards. (Storemasters, No.

[23] Available at: *www.energystar.gov/products/spec/commercial_refrigerators_and_freezers_specification_version_5_0_pd* (last accessed October 3, 2024).

68 at p. 1; FMI and NACS, No. 78 at p. 4).

In response to the comments from Hoshizaki, ITW, SCC, NAFEM, Due North, Hussmann, and FMI and NACS, DOE notes that, in this final rule, it updated its October 2023 NOPR engineering analysis based on testing conducted, teardowns conducted, and stakeholder feedback received since the October 2023 NOPR, including comments received from Hoshizaki, ITW, SCC, NAFEM, Due North, Hussmann, and FMI and NACS. Furthermore, as compared to the October 2023 NOPR, DOE is adopting generally less stringent efficiency levels in this final rule.

NAFEM indicated its belief that DOE has made high-level changes from the October 2023 NOPR to the August 2024 NODA and did not clearly explain what changes result from the changes made, and if they resolve the issues which were present in the October 2023 NOPR. (NAFEM, No. 101 at p. 2)

In response to the comment from NAFEM, DOE notes that the engineering changes from the October 2023 NOPR to August 2024 NODA were explained in section II.A of the August 2024 NODA and are further detailed in section IV.C.1.a.iii of this document. 89 FR 68788, 68790–68794. For example, in section II.A.3.a of the August 2024 NODA on evaporator fan controls, DOE explained that ''recognizing current uncertainty as to whether such food safety requirements could be maintained in certain applications of self-contained, closed CRE with the use of evaporator fan controls, DOE has tentatively screened out evaporator fan control as a design option for CRE. As a result, this NODA presents an updated engineering analysis that does not include evaporator fan control as a design option.'' 89 FR 68788, 68793.

In this final rule analysis, DOE is adopting TSL 3. DOE discusses the benefits and burdens of each TSL considered and DOE's conclusion in section V.C of this document. As discussed in that section, TSL 3 represents the maximum energy savings that are technically feasible and economically justified, as required by EPCA.

Food Safety

In response to the October 2023 NOPR, Hillphoenix, NAMA, and NAFEM stated that most CRE are certified to National Sanitation Foundation (''NSF'') 7 for food safe storage, which is required by U.S. and Canadian food safety standards and local health codes. (Hillphoenix, No. 77 at p. 3; NAMA, No. 85 at p. 16; NAFEM, No. 83 at pp. 10–11) ITW and NAFEM commented that to meet the energy efficiency standard proposed in the October 2023 NOPR, equipment would require design downgrades that would make it unable to consistently meet food safety standards, in which safe operating temperatures are required to be between 33 °F and 40 °F inside the cabinet. (ITW, No. 82 at p. 6; NAFEM, No. 83 at p. 10) NAMA requested that design options be reviewed not only for their efficiency but also for the ability to maintain food safe performance. (NAMA, No. 85 at p. 16) ITW added that the proposed levels threaten to mandate equipment that cannot keep food at safe temperatures. (ITW, No. 82 at p. 1)

In response to the October 2023 NOPR, FMI and NACS commented that, according to their members, the October 2023 NOPR does not evaluate the potential impact of the standards on food safety, because CRE that meet the proposed standards may be unable to consistently meet the refrigeration necessary to meet food safety standards. (FMI and NACS, No. 78 at p. 3)

In response to the October 2023 NOPR, NAFEM commented that DOE's proposed energy limits would likely force manufacturers to make the choice between a DOE-compliant product with a smaller refrigeration system and a product designed with adequate capacity to maintain food safety in the many different environmental conditions and general product conditions. (NAFEM, No. 83 at p. 11)

In response to the October 2023 NOPR and the August 2024 NODA, Hillphoenix suggested that DOE should categorize different CRE products based on the type of product or food displayed, and in the August 2024 NODA stated that current energy limits for CRE displaying perishable food products are too difficult to obtain while meeting NSF 7. (Hillphoenix, No. 77 at p. 3 and No. 110 at p. 2) In response to the October 2023 NOPR, Hillphoenix also commented that bottle coolers operate at warmer temperatures than CRE displaying perishable products, in order to maintain product temperatures at 41 °F or less, but both have the same energy limits established by a single equipment class. (Hillphoenix No. No. 77 at p. 3)

In response to the October 2023 NOPR, Ravnitzky commented that the October 2023 NOPR should consider the impacts of energy efficiency standards on food quality and safety and balance the benefits of energy savings with the costs of food loss and waste. (Ravnitzky, No. 57 at p. 3)

In response to comments about reviewing design options for efficiency but also for the ability to maintain food safe performance, and accounting for food loss and waste, DOE notes that in this final rule, consistent with the August 2024 NODA, DOE screened out evaporator fan controls after review of NSF 7 and other public comments stating that evaporator fan controls could potentially lead to internal case temperatures outside of NSF 7 tolerances, as further discussed in section IV.B.1.f. DOE has reviewed all design options analyzed to improve efficiency in this final rule and has determined, based on data and information available to DOE at the time of this final rule, that all other design options analyzed to improve efficiency would not affect the ability of CRE equipment to maintain food safe temperatures.

In response to Hillphoenix's comment regarding categorizing different CRE equipment based on the type of product or food displayed, DOE notes that the CRE equipment classes do differentiate between frozen merchandise (*i.e.,* low-temperature freezers and ice-cream freezers) and refrigerated merchandise (*i.e.,* medium-temperature refrigerators and high-temperature refrigerators).

In response to Hillphoenix's comment regarding bottle coolers operating at warmer temperatures than CRE displaying perishable products, DOE notes that all equipment certified to an equipment class must test their equipment according to the rating temperature for that equipment class, unless the equipment meets the definition of lowest application product temperature. See 10 CFR 431.62.

Equipment Elimination

In response to the October 2023 NOPR, SCC and NAFEM expressed concern that the October 2023 NOPR proposed standard level would force manufacturers to discontinue products or exit the CRE space. (SCC, No. 74 at p. 4; NAFEM, No. 83 at p. 2) NAFEM and Continental added this would harm consumers, reduce competition, and may increase energy consumption. (NAFEM, No. 83 at p. 2; Continental, No. 86 at p. 6)

In response to the October 2023 NOPR, Due North commented that it still found the energy standards for the VCT.SC.M.PT and VCT.SC.M.SDPT classes to be too stringent, given their extensive installation at store checkout counters. (Due North, No. 87 at p. 2) Due North called this situation a potential threat to the future existence of these classes on the market. (*Id.*)

With respect to these comments regarding the stringency of the proposed standards in the October 2023 NOPR

and the equipment modifications needed to meet those standards, pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(A)) In the October 2023 NOPR, DOE tentatively determined that TSL 5 represented the maximum improvement in energy efficiency that is technologically feasible and economically justified and to establish new energy conservation standards for covered equipment not yet subject to energy conservation standards. 88 FR 70196, 70197. In response to the October 2023 NOPR, DOE received feedback from commenters suggesting changes to the October 2023 NOPR analysis. After consideration of this feedback and a review of new test data, in this final rule, DOE has adjusted certain aspects of the October 2023 NOPR analysis approach. In this final rule, DOE is adopting new and amended energy conservation standards(*i.e.,* TSL 3) that DOE has determined represent the maximum improvement in energy efficiency that is technologically feasible and economically justified based on the numerous revisions to inputs and the analysis, resulting in revised analytical outputs since the October 2023 NOPR, discussed throughout section IV of this final rule. Further detail on changes to the engineering analysis from the October 2023 NOPR can be found in section IV.C of this document.

As stated, in the preceding paragraphs, the results presented in this final rule are generally less stringent than the standards proposed in the October 2023 NOPR. In the October 2023 NOPR, the PT and SDPT multiplier values were 1.04 and 1.11 respectively. 88 FR 70196, 70231. In the August 2024 NODA, DOE analyzed a single multiplier with value of 1.07. 89 FR 68788, 68794. In this final rule, consistent with the August 2024 NODA, DOE is analyzing equipment classes with features that allow for higher energy use. As discussed further in section IV.C.1.c of this document, the adjusted maximum daily energy use equation for equipment classes with features is equal to 1.07 multiplied by the corresponding equipment class equation (adjusted for backsliding if needed). Although the multiplier analyzed in this final rule is less than that in the October 2023 NOPR for the SDPT multiplier, at the representative capacity the amended standard for VCT.SC.M with feature is 24.8 percent less stringent than the VCT.SC.M.PT equation and 18.3 percent less stringent than the VCT.SC.M.SDPT equation proposed in the October 2023 NOPR.

Hussmann commented that, several of its models would be required to meet energy levels with energy use reductions up to 40 percent compared to 2017 DOE levels, and that Hussmann already put in work to meet the 2017 limits, limiting its ability to further improve energy consumption. (Hussmann, No. 80 at p. 10) Hussmann commented that if reduced energy limits reduce door and lighting options available for case energy performance, it will delay the conversion and prolong the use of open cases using far more energy than saved by tighter limits on door cases, leading to the obsolescence of some VCT equipment and driving customers to substitute products in the VOP classes that consume more energy, and Hussmann provided a table with additional detail. (*Id.* at pp. 10–11) Hussmann commented also that it has been continuously innovating for years due to marketplace demand. (*Id.* at p. 11) Hussmann pointed to a graph depicting its highest-volume dairy case from 1985 to 2023 and indicating that energy consumption has been reduced by 46 percent over the time period. (*Id.* at p. 12)

In response to the comment from Hussmann regarding door and lighting technology, DOE notes that the screening criteria in IV.B of this document screens out any technology options that are determined to have ''a significant adverse impact on the utility of the equipment to subgroups of consumers, or result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time.'' See section IV.B of this document for more details. Further, in response to Hussmann's comment regarding their efficiency improvements, DOE notes that the typical new consumer refrigerator uses one-quarter the energy than in 1973, despite offering 20 percent more storage capacity and being available at half the retail cost since EPCA was established in 1975, showing that there could be more potential savings than already achieved for the example cited by Hussmann.[24]

NAMA recommended that DOE champion and celebrate the changes that the industry has been making toward energy efficiency and reduce the demands to make additional changes. (NAMA, No. 85 at p. 9) NAMA commented that manufacturers have made changes that have further-reaching, more immediate impacts on energy efficiency than the design options being shown in the engineering analysis in the October 2023 NOPR TSD. (*Id.*) NAMA commented that the industry would appreciate some acknowledgement of these improvements over the past 10 years. (*Id.*)

Kirby stated that changes made to comply with energy conservation standards and low-GWP HFC restrictions that went into effect in 2017 have led to price increases. (Kirby, No. 66 at pp. 1–2)

In response to the August 2024 NODA, Storemasters commented that equipment manufacturers have already made significant changes to equipment to comply with the 2017 standards and much of the current equipment incorporates new refrigerants, particularly self-contained models that utilize R–290. (Storemasters, No. 68 at p. 1)

In response to NAMA's, Kirby's, and Storemasters' comments about the industry improvements over the past 10 years (*i.e.,* since the publication of the March 2014 Final Rule), DOE does acknowledge that in response to the March 2014 Final Rule, manufacturers generally made several changes: changing from fluorescent to LED lighting; updating compressors to either higher efficiency compressors using HFC refrigerants, or compressors using hydrocarbon refrigerants; improved evaporators and condensers; and, in some cases, higher-efficiency fan motors. These changes are acknowledged in the October 2023 NOPR and August 2024 NODA as DOE updated the baseline design specifications and costs for each ''primary equipment class'' (*i.e.,* directly analyzed class, see IV.C.1 for further description) based on test data, manufacturer feedback, and publicly available market data (*e.g.,* spec sheets). See 88 FR 70196, 70225–70231, 89 FR 68788, 68792.

Kirby and Storemasters commented that additional equipment modifications to meet the proposed standards in the October 2023 NOPR would represent a significant burden on their business because of increased equipment complexity and costs coupled with the potential for reduced equipment reliability, longevity, and consumer choice. (Kirby, No. 66 at p. 2, Storemasters, No. 68 at p. 1)

[24] See *www.energy.gov/eere/buildings/articles/appliance-and-equipment-standards-fact-sheet.*

Storemasters also stated that the new CRE it purchases includes significant changes over the past 6 years to comply with the 2017 standards and low-GWP HFC restrictions. (Storemasters, No. 68 at p. 1)

An individual commenter further expressed concern with the new technologies, stating components necessary to achieve the proposed standards add cost, complexity to the designs, and result in limiting availability and extended lead times. (Individual Commenter, No. 70 at p.1)

In response to the comments from Kirby and Storemasters, DOE notes that the commenters did not specify what design options may reduce equipment reliability. DOE screens out technology options that would result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time.

In response to the comments from Kirby, Storemasters, and an individual commenter regarding the potential for reduced equipment longevity and consumer choice due to increased complexity, DOE is not aware of any data on how the analyzed design options affect equipment lifetime and consumer choice for consumers. See section IV.B of this document for additional information on the screening analysis and section IV.F.6 for a discussion on CRE lifetime.

In response to the individual commenter regarding limiting availability and extended lead times, DOE notes that the screening analysis screens out any technology options that result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time. See section IV.B of this final rule.

c. Rulemaking Process

In response to the October 2023 NOPR, NAMA commented that while it appreciates DOE's willingness to schedule face-to-face meetings on these important rulemakings, questions posed by industry representatives during the November 2023 Public Meeting went largely unanswered by DOE and DOE consultants beyond providing information already provided in the October 2023 NOPR TSD or the October 2023 NOPR. (NAMA, No. 85 at p. 4) NAMA further commented that when industry broached many of these issues at the November 2023 Public Meeting, DOE read prepared answers but did not answer the original questions. (*Id.*)

NAMA stated that there does not appear to have been any contact between DOE consultants and its manufacturing members. (*Id.* at p. 6) NAMA commented that there are no records of manufacturer interviews, no record of emails exchanged, and no attempts made to contact these companies. (*Id.*) NAMA commented also that if DOE had conferred with manufacturers, it is more likely that the information in the October 2023 NOPR TSD would be closer to accurate information and more reflective of today's market. (*Id* at p. 6)

Hussmann recommended that, in future rulemakings, DOE engage manufacturers, component suppliers, retailers, and other stakeholders early in the process, because Hussmann alleged their equipment has already implemented available technologies, which yielded slight returns in energy savings with excessive cost. (Hussmann, No. 80 at p. 15)

In response to the August 2024 NODA, NAMA added that DOE turned down its offer to work with them and DOE did not substantially change the NODA support document based on NAMA's comments on the October 2023 NOPR TSD. (NAMA, No. 112 at p. 3, 7)

In response to the comment from NAMA about the November 2023 Public Meeting, DOE responded to all questions asked during the November 2023 Public Meeting to the best of its ability. (See November 2023 Public Meeting Transcript, No. 64). In response to the comment from NAMA regarding contact with its manufacturing members and the comment from Hussmann about engaging manufacturers, as stated in the October 2023 NOPR, DOE's contractors reached out to a range of representative manufacturers and conducted formal manufacturer interviews with nine manufacturers (representing approximately 60 percent of industry CRE shipments) in advance of the October 2023 NOPR. 88 FR 70196, 70251. During that process, DOE's contractors reached out to NAMA to inquire about its members' interest in participating in formal manufacturer interviews under a nondisclosure agreement but did not receive a response from NAMA. After the October 2023 NOPR was published, DOE held the November 2023 Public Meeting to receive comment on the standards proposed in the October 2023 NOPR and associated analyses and results. DOE has engaged with manufacturers through the rulemaking process, including hosting two Ex Parte meetings with AHRI, NAMA, and NAFEM; the first on Friday, January 27, 2023,[25] and the second on Monday, September 16, 2024,[26] and the October 2023 NOPR, the November 2023 Public Meeting, and the August 2024 NODA provided opportunity for NAMA and its members to provide comment, data, and information on the proposals and supporting analyses.

The CA IOUs recommended that DOE consider an informal or abbreviated negotiation to maximize energy savings for this rulemaking. (CA IOUs, No. 84 at pp. 6–7) The CA IOUs commented that they will support this rulemaking process by submitting test data for chef bases or griddle stands and high-efficiency, vertical, self-contained equipment in early 2024 and that the CA IOUs plan to send test results for prep tables to help DOE establish energy conservation standards for this equipment class in future rulemakings. (*Id.* at p. 7) In the November 2023 Public Meeting, Continental and NAFEM recommended that there be continued dialogue between DOE and stakeholders concerning energy efficiency standards for CRE. (November 2023 Public Meeting Transcript, No. 64 at pp. 150, 152) Hoshizaki similarly requested negotiations with DOE to find realistic energy savings for this rulemaking. (*Id.* at p. 21)

In response to the comments from the CA IOUs, Continental, NAFEM, and Hoshizaki, DOE appreciates the recommendation but has not pursued a negotiation for this rulemaking. Additionally, DOE welcomes test data for any equipment category, including chef bases or griddle stands; buffet tables or preparation tables; or high-efficiency, vertical, self-contained equipment, submitted by the CA IOUs or any other stakeholder for consideration in future rulemakings.

Continental commented that the proposed rulemaking will have a major impact on its business and pointed out that section 3(a) of 10 CFR part 430, subpart C, appendix A (''Process Rule'') specifies a 75-day comment period while DOE is providing only 60 days—which is insufficient for a small business like Continental to review the October 2023 NOPR, the 567-page October 2023 NOPR TSD, and the many other supporting documents. (Continental, No. 86 at pp. 1–2) Continental commented also that DOE deviated from the requirement in the Process Rule that the amended test

[25] *See www.regulations.gov/document/EERE-2017-BT-STD-0007-0050.*

[26] See *www.energy.gov/gc/ex-parte-communications.*

procedures be finalized at least 180 days prior to the close of the comment period for the October 2023 NOPR, instead providing an interval of 76 days for review and evaluation prior to the deadline of the comment period, which Continental stated is insufficient. (*Id.* at pp. 2–3)

In response to the comment from Continental, DOE notes that the current Process Rule at Section 6(b)(2) specifies that there will be not less than 60 days for public comment on the NOPR, which is consistent with the comment period in the October 2023 NOPR. This 60-day period is also consistent with EPCA requirements. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(p)). Further, the October 2023 NOPR stated that given that the analysis presented in the NOPR remained largely the same as the June 2022 Preliminary Analysis, and in light of the 45-day comment period DOE had already provided with the July 2021 RFI and the 60-day comment period DOE had already provided with its June 2022 Preliminary Analysis, DOE determined that a 60-day comment period was appropriate and provided interested parties with a meaningful opportunity to comment on the proposed rule. 88 FR 70196, 70205. DOE appreciates the considerable volume of comments and information it received in response to the October 2023 NOPR and the August 2024 NODA, which contributed to significant revisions to the final rule analysis and aided in DOE's ability to establish efficiency levels that would be technologically feasible and economically justified.

DOE also notes that, in the October 2023 NOPR, DOE initially determined that the requirement that the amended test procedures be finalized at least 180 days prior to the close of the comment period for the October 2023 NOPR was sufficiently met because, for the equipment whose measured energy use was impacted by the CRE test procedure final rule (''September 2023 Test Procedure Final Rule''; 88 FR 66152 (Sept. 26, 2023)), the CRE industry has thoroughly vetted both Air Conditioning, Heating, and Refrigeration Institute (''AHRI'') 1200–2023 and the proposed addendum B to American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE'') 72–2022. *Id.* at 88 FR 70205. Additionally, DOE believes that stakeholders have had sufficient time for review and evaluation of the September 2023 Test Procedure Final Rule, especially because commenters had an additional opportunity to provide comment on this rulemaking through the August 2024 NODA, which was published more than 180 days after the publication of the September 2023 Test Procedure Final Rule.

Rulemaking Timeline

In response to the October 2023 NOPR, ITW commented that if DOE cannot issue a ''no new standards'' ruling, DOE should extend the review period by 1 year to allow for sufficient time for manufacturers to conduct verification tests to validate the proposed energy standards for the various new equipment categories with different door characteristics and to provide informed comments to DOE. (ITW, No. 82 at p. 2)

Hussmann, Hillphoenix, NAFEM, FMI and NACS, and Hoshizaki requested a pause in DOE rulemakings due to the requirements of the AIM act and other new regulations (Hussmann, No. 80 at p. 1; Hillphoenix, No. 77 at p. 2; NAFEM, No. 83 at p. 26; FMI and NACS, No. 78 at pp. 2–3; Hoshizaki, No. 76 at p. 1) In response to the August 2024 NODA, Hillphoenix commented requesting a pause in rulemakings for CRE given the ongoing efforts to transition to new refrigerants, pursuant to the AIM Act. (Hillphoenix, No. 110 at p. 2) In response to the October 2023 NOPR, Hoshizaki, SCC, AHRI, ITW, NAFEM, and Hussmann commented that a delay in the rulemaking would allow additional time for manufacturers to complete the transition to low-GWP refrigerants (Hoshizaki, No. 76 at pp. 1–2, 7; SCC, No. 74 at p. 2; AHRI, No. 81 at p. 5; ITW, No. 82 at p. 1; NAFEM, No. 83 at p. 26; Hussmann, No. 80 at pp. 6–7, 10)

In response to comments requesting that DOE pause or delay the rulemaking, DOE is statutorily required to publish either a NOPD, if it finds that standards for the equipment do not need to be amended, or a NOPR including new proposed energy conservation standards not later than 6 years after the issuance of any final rule establishing or amending a standard. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(m)(1)) Not later than two years after a NOPR is issued, DOE must publish a final rule amending the energy conservation standard for the equipment. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(m)(3)(A)) The final rule that amended the current standards for CRE was issued in 2014. DOE is conducting this rulemaking pursuant to these statutory requirements. Additionally, pursuant to a consent decree entered on September 20, 2022 and amended on September 25, 2024, DOE has agreed to sign and post on DOE's publicly accessible website a rulemaking document for CRE by December 30, 2024, that, when effective, would be DOE's final agency action for standards for CRE.[27] Regarding delaying compliance due to the transition to low-GWP refrigerants, see sections III.A.2.a and IV.J.3.f of this document.

In response to the August 2024 NODA, GAAS, NAMA, and Zero Zone commented that DOE did not allow sufficient time to review the documents, with an updated support document version published 10 days before the end of the comment period. (GAAS, No. 96 at p. 2; NAMA, No. 112 at p. 3; Zero Zone, No. 114 at p. 1) Zero Zone also commented that DOE should have made a comparison of changes between the October 2023 NOPR TSD and NODA support document. (Zero Zone, No. 114 at p.1)

In response to these comments, DOE notes that updates to the NODA support document were minor clarifications, and all changes were detailed under ''Revision History'' in Section 8. With regards to Zero Zone's request for a list of changes, DOE detailed any changes from the October 2023 NOPR throughout the August 2024 NODA.

B. Scope of Coverage

This final rule covers the commercial refrigeration equipment that meet the definition of ''commercial refrigerators, freezers, and refrigerator-freezers,'' as codified at 10 CFR 431.62.

''Commercial refrigerators, freezers, and refrigerator-freezers'' means refrigeration equipment that: (1) is not consumer equipment (as defined in section 430.2 of part 430); (2) is not designed and marketed exclusively for medical, scientific, or research purposes; (3) operates at a chilled, frozen, combination chilled and frozen, or variable temperature; (4) displays or stores merchandise and other perishable materials horizontally, semi-vertically, or vertically; (5) has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent, or solid doors, or no doors; (6) is designed for pull-down temperature applications or holding temperature applications; and (7) is connected to a self-contained condensing unit or to a remote condensing unit. 10 CFR 431.62.

In the October 2023 NOPR, DOE proposed establishing equipment classes for high-temperature refrigerators and chef bases or griddle stands. 88 FR 70196, 70214–70215. DOE

[27] Consent Decree, *Nat. Res. Def. Council, Inc.* v. *Granholm,* No. 1:20–cv–09127 (S.D.N.Y.), Sept. 20, 2022).), Amend. Consent Decree, *State of N.Y.* v. *Granholm,* No. 1:20–cv–09362 (S.D.N.Y. Sept. 25, 2024). *See www.nrdc.org/sites/default/files/ee-standards-settlement-20220920.pdf.* September 25, 2024 amendment available at *ecf.nysd.uscourts.gov/doc1/127136202802.*

received several comments in response to the October 2023 NOPR regarding this proposal.

In response to the October 2023 NOPR, NYSERDA and NEEA and NWPCC supported DOE's addition of chef bases and high-temperature refrigerators to the scope of coverage for the CRE energy conservation standards, agreeing with DOE's assertion that there are technically feasible opportunities for significant cost-effective energy savings from these categories. (NYSERDA, No. 88 at p. 1; NEEA and NWPCC, No. 89 at pp. 4–5)

In response to the October 2023 NOPR, Continental disagreed with DOE's proposal to include standards for refrigerated chef bases and griddle stands at this time. (Continental, No. 86 at p. 2) Continental commented that while it concurred with this decision in the September 2023 Test Procedure Final Rule to prescribe new test conditions for refrigerated chef bases and griddle stands, actual testing has not been conducted to form a basis for establishing standards efficiency levels at the mandated conditions. (*Id.* at pp. 2–3)

In response to the comment from Continental comment about lack of test data, as discussed in section IV.C.1.c of this document, DOE has tested chef bases or griddle stands per the amended test procedure prescribed by the September 2023 Test Procedure Final Rule. In addition, manufacturers have had additional time to test chef bases and submit data since the publication of the October 2023 NOPR, and the August 2024 NODA provided additional opportunity to comment on the chef base or griddle stand analysis. For example, the CA IOUs commented on the August 2024 NODA stating that they conducted testing on CRE units, including chef bases or griddle stands. (The CA IOUs, No. 113, at p. 2). The CA IOUs tested 15 vertical solid door units (9 VCS.SC.M, 6 VCS.SC.L) and 5 chef bases or griddle stands (3 CB.SC.M, 2 CB.SC.L) to evaluate daily energy consumption and performance. *Id.* The CA IOUs commented that with DOE's test data published in the August 2024 NODA, the CA IOUs can confirm that the daily energy consumption values for the units they tested are consistent with DOE's data, and that the CA IOUs plan to share anonymized test results with the public once the CA IOUs finalize their test report. *Id.*

Therefore, DOE continues to include high-temperature refrigerators and chef bases and griddle stands within the scope of this final rule.

However, the scope of this final rule does not include some types of commercial refrigerators, refrigerator-freezers, and freezers that meet the definition at 10 CFR 431.62. These include blast chillers, blast freezers, buffet tables or preparation tables, mobile refrigerated cabinets, refrigerated bottled- or canned-beverage vending machines, and, as discussed in section II.B.3 of this document, the large-capacity CRE ranges presented in table IV.6 for the VOP.SC.M, SVO.SC.M, HZO.SC.L, SOC.SC.M, VCT.SC.M, VCT.SC.L, and VCS.SC.L equipment classes.

See section IV.A.1 of this document for discussion of the equipment classes analyzed in this final rule.

C. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6314(a)) Manufacturers of covered equipment must use these test procedures as the basis for certifying to DOE that their product complies with the applicable energy conservation standards and as the basis for any representations regarding the energy use or energy efficiency of the equipment. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(s); and 42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to evaluate whether a basic model complies with the applicable energy conservation standard(s). 10 CFR 429.110(e). The current test procedure for CRE is codified at appendix B and includes provisions for determining daily energy consumption, the metric on which current standards are based. 10 CFR 431.66(e) This test procedure was amended in the September 2023 Test Procedure Final Rule, in which DOE amended and established test procedures for CRE as follows:

(1) Established new definitions for high-temperature refrigerator, medium-temperature refrigerator, low-temperature freezer, and mobile refrigerated cabinet, and amended the definition for ice-cream freezer;

(2) Incorporated by reference the most current versions of industry standards AHRI 1200, ASHRAE 72, and AHRI 1320;

(3) Established definitions and a new appendix C including test procedures for buffet tables and preparation tables;

(4) Established definitions and a new appendix D including test procedures for blast chillers and blast freezers;

(5) Amended the definition and certain test conditions for chef bases or griddle stands;

(6) Specified refrigerant conditions for CRE that use R–744;

(7) Allowed for certification of compartment volumes based on computer-aided design (''CAD'') models;

(8) Incorporated provisions for defrosts and customer order storage cabinets specified in waivers and interim waivers;

(9) Adopted product-specific enforcement provisions;

(10) Clarified use of the lowest application product temperature (''LAPT'') provisions;

(11) Removed the obsolete test procedure in appendix A; and

(12) Specified a sampling plan for volume and total display area (''TDA'').

88 FR 66152, 66154.

In response to the October 2023 NOPR, Ravnitzky commented that the proposed rule lacks clear and detailed guidance on the test conditions and procedures for measuring energy consumption in CRE that use alternative refrigerants, such as hydrocarbons or CO_2. (Ravnitzky, No. 57 at pp. 1–2) Ravnitzky added that these alternative refrigerants have different performance characteristics than conventional HFC refrigerants and may require different test methods to ensure accurate and consistent results. (*Id.* at p. 2) Ravnitzky suggested that DOE specify or reference the test conditions and procedures for measuring the energy consumption of CRE that use alternative refrigerants, and that these should be consistent with ASHRAE or AHRI standards or best practices for testing CRE. (*Id.*)

In response to the comment from Ravnitzky, the DOE CRE test procedure for CRE currently subject to energy conservation standards at 10 CFR 431.66(e) is located at appendix B and is applicable to CRE using any type of refrigerant. DOE notes that, consistent with ASHRAE 72–2022 with Errata, testing for self-contained equipment with hydrocarbon refrigerants (*e.g.,* R–290), CO_2 refrigerant (*i.e.,* R–744), or A2L refrigerants does not require a different test method than for self-contained equipment using conventional refrigerants. In appendix B, DOE provides specific instructions for CRE connected to a direct-expansion remote-condensing unit with R–744, which requires different liquid refrigerant measurements than direct-expansion remote-condensing units specified in appendix A to ASHRAE 72–2022 with Errata. Therefore, the appendix B is applicable to CRE using any type of refrigerant and is consistent with industry standards.

NEEA and NWPCC expressed concern that the October 2023 NOPR misses savings opportunities for the remote condensing equipment classes. (NEEA and NWPCC, No. 89 at p. 4) Specifically, NEEA and NWPCC recommended that remote condenser energy be accounted for in the testing and rating of CRE so that these energy-saving features can be assessed in the

energy use analysis. (*Id.*).[28] NEEA and NWPCC explained that DOE's present analysis does not test the remote condenser; therefore, the energy-saving design options that impact the consumption of the remote condenser do not impact the tested rating. (*Id.*) NEEA and NWPCC commented that this approach fails to consider efficiency options such as ECMs, evaporator fans, variable-speed compressors (''VSCs''), or controls for remote condensing CRE—all of which create opportunities for significant energy savings. (*Id.*)

In response to the comment from NEEA and NWPCC, the definition of ''commercial refrigerator, freezer, and refrigerator-freezer'' was established in EPCA. See 42 U.S.C. 6311(9)(A). The definition requires that the refrigeration equipment is connected to a self-contained condensing unit or to a remote condensing unit. The self-contained condensing unit is defined as an integral part of the refrigerated equipment, whereas the remote condensing unit is defined as being remotely located from the refrigerated equipment. Based on these definitions, the remote condensing unit energy use is currently accounted for by the DOE test procedure through a calculation approach specified in section 5.1 of AHRI 1200–2023, which is incorporated by reference in the DOE test procedure at appendix B. In the September 2023 Test Procedure Final Rule, DOE stated it is aware of remote condensing CRE models for which specific dedicated condensing units are intended for use with specific refrigerated cases. 88 FR 66152, 66205. For CRE used with dedicated condensing units, the actual compressor used during normal operation is known (*i.e.,* the compressor in the dedicated condensing unit). *Id.* Accordingly, testing the whole system using the same approach as required for a self-contained CRE unit may produce energy use results that are more representative of how this equipment actually operates in the field. *Id.* DOE understands that remote CRE are most commonly installed with rack condensing systems, and that installations with dedicated condensing units represent a very small portion of the remote CRE market. *Id.* DOE is not aware of any remote CRE that are capable of installations only with a dedicated remote condensing unit (*i.e.,* DOE expects that all remote CRE may be installed with rack condensing systems). *Id.* In the June 2022 NOPR, DOE requested comment on its tentative determination not to propose amended test procedures for dedicated remote condensing units. *Id.* DOE only received comments agreeing with the June 2022 NOPR approach and DOE determined not to adopt test provisions for dedicated remote condensing units at this time. *Id.*

In response to the October 2023 NOPR, Continental commented that designing commercial refrigerators and freezers with technology options to meet energy limits in 75 °F/55-percent relative humidity (''RH'') ambient conditions has shown to cause performance issues when these technologies are employed in real-world commercial kitchen conditions. (Continental, No. 86 at p. 3)

In response to the August 2024 NODA, Continental disagreed with DOE establishing test procedures and efficiency standards for commercial refrigerators and freezers using ambient testing conditions of 75 °F/55 percent RH, stating that these conditions do not correspond with energy consumption during a representative average use period as required by EPCA. (Continental, No. 107 at p. 2)

In response to the October 2023 NOPR and August 2024 NODA, Delfield disagreed with the 86 °F test ambient criteria for chef bases/griddle stands because it conflicts with the recently established Energy Star requirement, creating additional burden for manufacturers by requiring different test rooms from other equipment that is tested at 75/55 percent, and because it creates confusion for end-users when comparing energy consumption between unit types. (Delfield, No. 71, p. 1; Delfield, No. 99 at p. 2) Delfield added that 75/55 percent has been the primary ambient condition for CRE for around 40 years so they do not see a reason that this should change. (*Id.*) Delfield requested that DOE review this change and align with Energy Star version 5 regulations for ambient conditions and energy usage. (*Id. at pp. 2–3*)

In response to the comments from Continental and Delfield, the test procedure for equipment included in the scope of this rulemaking is prescribed at 10 CFR 431.64 and appendix B, and was finalized in the September 2023 Test Procedure Final Rule. As part of the test procedure rulemaking process, DOE provided stakeholders opportunity to comment on potential test procedure amendments, including on test conditions such as ambient temperature and humidity for testing. The September 2023 Test Procedure Final Rule provides discussion of its deliberations in finalizing test procedures, for example regarding test ambient conditions for chef bases in section III.C.4 of the September 2023 Test Procedure Final Rule. See 88 FR 66152, 66203 (Sept. 26, 2023). DOE notes that the September 2023 Test Procedure Final Rule is consistent with the proposed addendum B to ASHRAE 72–2022,[29] which proposes the same test conditions for chef bases or griddle stands as in the DOE test procedure. In response to the comment from Delfield regarding end users' comparisons of products, DOE noted in the September 2023 Test Procedure Final Rule that manufacturers may not offer CRE in a different CRE equipment class with similar designs to any chef base or griddle stand, in which case end-users are likely concerned primarily about comparing chef bases or griddle stands to each other at the same ambient conditions. 88 FR 66152, 66200.

Hoshizaki and AHRI disagreed that the DOE test procedure for refrigerated buffet and preparation tables was a valid test procedure. (Hoshizaki, No. 76 at p. 2; AHRI, No 81 at p.6) Hoshizaki encouraged DOE to work with industry to make ASTM F2143, which is currently under review for final changes and votes, a valid test procedure with changes DOE requests. (Hoshizaki, No. 76 at p. 2)

In response to Hoshizaki and AHRI, DOE notes that the DOE test procedure for refrigerated buffet and preparation tables, located at appendix C to subpart C of part 431, already references the latest version of ASTM F2143 as one of several references for the test procedure for refrigerated buffet and preparation tables. As noted in the September 2023 Test Procedure Final Rule, DOE evaluated ASTM F2143–16 and identified the need for additional provisions or alternate requirements. 88 FR 66152, 66175. DOE noted that NSF 7 is intended to ensure refrigerating performance and food safety, not energy use; while ASTM F2143–16 was developed to evaluate energy performance, and with the additional requirements established in the September 2023 Test Procedure Final Rule, DOE determined that referencing ASTM F2143–16 is appropriate and meets the EPCA requirements. *Id.* DOE will consider any updates to industry test standards that are currently incorporated by reference, as well as any potential new industry test

[28] Remote condenser energy use is addressed in the current test procedure with standardized EER values rather than direct measurement of remote condenser performance. *See* section 5.1 of AHRI 1200–2023.

[29] *See www.ashrae.org/file%20library/technical%20resources/standards%20and%20guidelines/standards%20addenda/72_2022_b_20240830.pdf.*

standards relevant to refrigerated buffet and preparation tables in future test procedure rulemakings.

See section IV.A.1.c for additional comments and responses on refrigerated buffet or preparation tables and blast chillers and freezers.

ITW and NAFEM also commented that DOE's current test procedure tests CRE in given ambient temperature, humidity, and door opening conditions that fall short of actual field conditions. (ITW, No. 82 at p. 6; NAFEM, No. 83 at pp. 10–11) ITW and NAFEM commented that the total door-open time that the ASHRAE 72 test calls for amounts to 0.6 percent of a commercial refrigerator's operating day, whereas based on its empirical application data, a reach-in refrigerator in a 24-hour quick-service restaurant kitchen is open nearly 25 percent of the time, and a freezer is open nearly 12 percent of the time. (ITW, No. 82 at p. 6; NAFEM, No. 83 at p. 10) NAFEM also commented that most CRE are certified to NSF 7 for food storage, which requires passing a test at 100 °F. (NAFEM, No. 83 at p. 10) ITW commented that quickly restoring safe operating temperatures inside the cabinet requires a sizable refrigeration system and, unfortunately, this workload requires more electricity than the proposed regulations would allow. (ITW, No. 82 at p. 6) NAFEM stated that CRE must be designed with enough capacity to meet both NSF and customers' requirements, meaning large enough refrigeration systems to operate in these environments. (NAFEM, No. 83 at p. 11) NAFEM commented that CRE may not be able to keep potentially hazardous food products at safe temperatures when conditions are unfavorable under the proposed standards. *(Id.)*

In response to ITW and NAFEM's comments on the DOE test procedure not aligning with field conditions, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. 42 U.S.C. 6314. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use, or estimated annual operating cost of a given type of covered equipment during a representative average use cycle, and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)). With respect to CRE, EPCA requires DOE to use the test procedures determined by the Secretary to be generally accepted industry standards, or industry standards developed or recognized by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE'') or American National Standards Institute (''ANSI''). (42 U.S.C. 6314(a)(6)(A)(i)) With regard to self-contained CRE to which statutory standards are applicable, the required initial test procedure is the ASHRAE 117 test procedure in effect on January 1, 2005. (42 U.S.C. 6314(a)(6)(A)(ii)) Additionally, EPCA requires that if ASHRAE 117 is amended, the Secretary shall, by rule, amend the test procedure for the product as necessary to ensure that the test procedure is consistent with the amended ASHRAE 117 test procedure, unless the Secretary makes a determination, by rule, and supported by clear and convincing evidence, that to do so would not meet the statutory requirements regarding representativeness and burden. (42 U.S.C. 6314(a)(6)(E)) Finally, EPCA states that if a test procedure other than the ASHRAE 117 test procedure is approved by ANSI, DOE must review the relative strengths and weaknesses of the new test procedure relative to the ASHRAE 117 test procedure and adopt one new test procedure for use in the standards program. (42 U.S.C. 6314(a)(6)(F)(i)) In the September 2023 Test Procedure Final Rule, DOE determined that the amended DOE test procedure, by reference to AHRI 1200–2023 and ASHRAE 72–2022 with Errata for conventional CRE, provides a measure of energy use of CRE during a representative average use cycle and is not unduly burdensome to conduct. 88 FR 66152, 66205. DOE notes that the test procedure instructions in section 2.3 of appendix B allow for the use of integrated average temperatures and ambient conditions used for NSF testing in place of the DOE-prescribed integrated average temperatures and ambient conditions provided they result in a more stringent test.

In response to NAFEM and ITW's comments on refrigeration system size, DOE notes that no specific information on the refrigeration size to meet food safety requirements was received, and that DOE's representative analysis accounts for a variety of equipment when analyzing design specifications, including refrigeration system size. DOE further discusses food safety in relation to design options in section IV.B.1.f.

D. Technological Feasibility

1. General

As discussed, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(A))

To determine whether potential amended standards would be technologically feasible, DOE first develops a list of all known technologies and design options that could improve the efficiency of the products or equipment that are the subject of the rulemaking. DOE considers technologies incorporated in commercially available products or in working prototypes to be ''technologically feasible.'' 10 CFR 431.4; 10 CFR 430, subpart C, appendix A, sections 6(b)(3)(i) and 7(b)(1). Section IV.A.3 of this document discusses the technology options identified by DOE for this analysis. For further details on the technology assessment conducted for this final rule, see chapter 3 of the final rule TSD.

After DOE has determined which, if any, technologies and design options are technologically feasible, it further evaluates each technology and design option in light of the following additional screening criteria: (1) practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety; and (4) unique-pathway proprietary technologies. 10 CFR 431.4; 10 CFR part 430, subpart C, appendix A, sections 6(b)(3)(ii)–(v) and 7(b)(2)–(5). Those technology options that are ''screened out'' based on these criteria are not considered further. Those technology options that are not screened out are considered as potential design options for the basis for higher efficiency levels that DOE could consider for potential amended standards. Section IV.B of this document discusses the results of this screening analysis conducted for this final rule. For further details on the screening analysis conducted for this final rule, see chapter 4 of the final rule TSD.

2. Maximum Technologically Feasible Levels

EPCA requires that for any proposed rule that prescribes an amended or new energy conservation standard, or prescribes no amendment or no new standard for a type (or class) of covered equipment, DOE must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each type (or class) of covered equipment. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE identifies the maximum efficiency level currently available on

the market. DOE also defines a ''max-tech'' efficiency level, representing the maximum theoretical efficiency that can be achieved through the application of all available technology options retained from the screening analysis.[30] In many cases, the max-tech efficiency level is not commercially available because it is not currently economically feasible.

The max-tech levels that DOE determined for this analysis are described in section IV.C.1.b of this document and in chapter 5 of the final rule TSD.

E. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from application of the TSL to CRE purchased during the 30-year period that begins in the year of compliance with the new and amended standards (2029–2058).[31] The savings are measured over the entire lifetime of CRE purchased during the 30-year analysis period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of new and amended energy conservation standards.

DOE used its national impact analysis (''NIA'') spreadsheet models to estimate NES from amended or new standards for CRE. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports NES in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. For natural gas, the primary energy savings are considered to be equal to the site energy savings. DOE also calculates NES in terms of FFC energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[32] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.2 of this document.

2. Significance of Savings

To adopt any new or amended standards for a covered equipment, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(3)(B))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[33] For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than the impacts of products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC national energy savings, the cumulative FFC emissions reductions, and the need to confront the global climate crisis, among other factors.

As stated, the standard levels adopted in this final rule are projected to result in NES of 1.11 quad full-fuel-cycle (''FFC''), the equivalent of the primary annual energy use of 7.4 million homes. Based on the amount of FFC savings, the corresponding reduction in emissions, and the need to confront the global climate crisis, DOE has determined the energy savings from the standard levels adopted in this final rule are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

F. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of potential new or amended standards on manufacturers, DOE conducts an MIA, as discussed in section IV.J of this document. First, DOE uses an annual cash flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) INPV, which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national NPV of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared To Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered equipment that are likely to result from a standard. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analyses.

The LCC is the sum of the purchase price of an equipment (including its installation) and the operating cost (including energy, maintenance, and repair expenditures) discounted over

[30] In applying these design options, DOE would only include those that are compatible with each other that when combined, would represent the theoretical maximum possible efficiency.

[31] DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[32] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

[33] The numeric threshold for determining the significance of energy savings established in a final rule published on February 14, 2020 (85 FR 8626, 8670) was subsequently eliminated in a final rule published on December 13, 2021 (86 FR 70892).

the lifetime of the equipment. The LCC analysis requires a variety of inputs, such as equipment prices, equipment energy consumption, energy prices, maintenance and repair costs, equipment lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as equipment lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient equipment through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analyses, DOE assumes that consumers will purchase the covered equipment in the first year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. DOE's LCC and PBP analyses are discussed in further detail in section IV.F of this document.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section IV.H of this document, DOE uses the NIA spreadsheet models to project NES.

d. Lessening of Utility or Performance of Products

In establishing equipment classes, and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered equipment. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards adopted in this document would not reduce the utility or performance of the equipment under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a standard. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(ii)) To assist the Department of Justice (''DOJ'') in making such a determination, DOE transmitted copies of its proposed rule and the October 2023 NOPR TSD to the Attorney General for review, with a request that DOJ provide its determination on this issue. In its assessment letter responding to DOE, DOJ concluded that the proposed energy conservation standards for CRE are unlikely to have a significant adverse impact on competition. DOE is publishing the Attorney General's assessment at the end of this final rule.

f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the adopted standards are likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section IV.M of this document.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The adopted standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and GHGs associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K of this document; the estimated emissions impacts are reported in section V.B.6 of this document. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L of this document.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the equipment that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(iii)) DOE's LCC and PBP analyses generate values used to calculate the effect potential amended energy conservation standards would have on the PBP for consumers. These analyses include, but are not limited to, the 3-year PBP contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6316(e)(1) and 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section V.B.1.c of this document.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to CRE. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards considered in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation

standards. The NIA uses a second spreadsheet set that provides shipments projections and calculates NES and NPV of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (''GRIM''), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this rulemaking: *www.energy.gov/eere/buildings/commercial-refrigeration-equipment.* Additionally, DOE used output from the latest version of the Energy Information Administration's (''EIA's'') *Annual Energy Outlook* (''*AEO*'') for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, manufacturers, market characteristics, and technologies used in the equipment. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment for this rulemaking include: (1) a determination of the scope of the rulemaking and equipment classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) market and industry trends, and (5) technologies or design options that could improve the energy efficiency of CRE. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the final rule TSD for further discussion of the market and technology assessment.

1. Equipment Classes and Definitions

When evaluating and establishing or amending energy conservation standards, DOE establishes separate standards for a group of covered equipment (*i.e.,* establish a separate equipment class) based on the type of energy used, or if DOE determines that an equipment's capacity or other performance-related feature justifies a different standard. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(q)) In making a determination whether a performance-related feature justifies a different standard, DOE considers such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (*Id.*)

DOE currently sets forth energy conservation standards and relevant definitions for CRE equipment classes at 10 CFR 431.66 and 10 CFR 431.62, respectively. The October 2023 NOPR proposed some new equipment classes. In this final rule, DOE is maintaining the equipment classes and definitions proposed in the October 2023 NOPR as well as adopting several new equipment class modifications and new definitions that were introduced in the August 2024 NODA. The current equipment classes and the new definitions and equipment class modifications being finalized in this document and considered in the analysis are outlined as follows.

a. Current Equipment Classes and Definitions

DOE currently separates CRE into 49 equipment classes, which are categorized according to the following physical and functional attributes and equipment efficiency:

(1) operating temperature—refrigerator (≥32 °F), freezer (<32 °F), or ice-cream freezer (≤ − 5 °F);
(2) presence of doors—open (without doors) or closed (with doors);
(3) door type—solid or transparent;
(4) condensing unit—remote or self-contained;
(5) configuration—horizontal, vertical, semivertical, or service over counter; and
(6) temperature pull-down capability.

Definitions supporting the current equipment classes are as follows:

Closed solid means equipment with doors, and in which more than 75 percent of the outer surface area of all doors on a unit are not transparent.

Closed transparent means equipment with doors, and in which 25 percent or more of the outer surface area of all doors on the unit are transparent.

Commercial freezer means a unit of commercial refrigeration equipment in which all refrigerated compartments in the unit are capable of operating below 32 °F (±2 °F).

Commercial refrigerator means a unit of commercial refrigeration equipment in which all refrigerated compartments in the unit are capable of operating at or above 32 °F (±2 °F).

Commercial refrigerator, freezer, and refrigerator-freezer means refrigeration equipment that:

(1) is not a consumer product (as defined in section 430.2 of part 430);
(2) is not designed and marketed exclusively for medical, scientific, or research purposes;
(3) operates at a chilled, frozen, combination chilled and frozen, or variable temperature;
(4) displays or stores merchandise and other perishable materials horizontally, semivertically, or vertically;
(5) has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent, or solid doors, or no doors;
(6) is designed for pull-down temperature applications or holding temperature applications; and
(7) is connected to a self-contained condensing unit or to a remote condensing unit.

Door means a movable panel that separates the interior volume of a unit of commercial refrigeration equipment from the ambient environment and is designed to facilitate access to the refrigerated space for the purpose of loading and unloading product. This includes hinged doors, sliding doors, and drawers. This does not include night curtains.

Holding temperature application means a use of commercial refrigeration equipment other than a pull-down temperature application, except a blast chiller or freezer.

Horizontal closed means equipment with hinged or sliding doors and a door angle greater than or equal to 45°.

Horizontal open means equipment without doors and an air-curtain angle greater than or equal to 80° from the vertical.

Ice-cream freezer means:

(1) prior to the compliance date(s) of any amended energy conservation standard(s) issued after January 1, 2023 for ice-cream freezers, a commercial freezer that is capable of an operating temperature at or below − 5.0 °F and that the manufacturer designs, markets, or intends specifically for the storing, displaying, or dispensing of ice cream or other frozen desserts; or

(2) upon the compliance date(s) of any amended energy conservation standard(s) issued after January 1, 2023 for ice-cream freezers, a commercial freezer that is capable of an operating temperature at or below − 13.0 °F and that the manufacturer designs, markets, or intends specifically for the storing, displaying, or dispensing of ice cream or other frozen desserts.

Low-temperature freezer means a commercial freezer that is not an ice-cream freezer.

Medium-temperature refrigerator means a commercial refrigerator that is capable of an operating temperature at or below 40.0 °F.

Pull-down temperature application means a commercial refrigerator with doors that, when fully loaded with 12-ounce beverage cans at 90 °F, can cool those beverages to an average stable temperature of 38 °F in 12 hours or less.

Remote condensing unit means a factory-made assembly of refrigerating components designed to compress and liquefy a specific refrigerant that is remotely located from the refrigerated equipment and consists of one or more refrigerant compressors, refrigerant

condensers, condenser fans and motors, and factory-supplied accessories.

Self-contained condensing unit means a factory-made assembly of refrigerating components designed to compress and liquefy a specific refrigerant that is an integral part of the refrigerated equipment and consists of one or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory-supplied accessories.

Semivertical open means equipment without doors and an air-curtain angle greater than or equal to 10° and less than 80° from the vertical.

Service over counter means equipment that has sliding or hinged doors in the back intended for use by sales personnel, with glass or other transparent material in the front for displaying merchandise, and that has a height not greater than 66 inches and is intended to serve as a counter for transactions between sales personnel and customers.

Transparent means greater than or equal to 45-percent light transmittance, as determined in accordance with the ASTM Standard E 1084–86 (Reapproved 2009) (incorporated by reference, see section 431.63), at normal incidence and in the intended direction of viewing.

Vertical closed means equipment with hinged or sliding doors and a door angle less than 45°.

Vertical open means equipment without doors and an air-curtain angle greater than or equal to 0° and less than 10° from the vertical.

10 CFR 431.62.

On March 28, 2014, DOE published the March 2014 Final Rule that established the current equipment classes and corresponding standards for CRE. 79 FR 17725. Table IV.1 shows the current CRE equipment classes and standards.

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Table IV.1 Current CRE Equipment Classes

Condensing Unit Configuration	Equipment Family	Operating Temperature (°F)	Equipment Class Designation	Maximum Daily Energy Consumption (kWh/day)*
Remote Condensing (RC)	Vertical Open (VOP)	≥ 32	VOP.RC.M	0.64 x TDA + 4.07
		< 32	VOP.RC.L	2.2 x TDA + 6.85
		≤ -5	VOP.RC.I	2.79 x TDA + 8.7
	Semivertical Open (SVO)	≥ 32	SVO.RC.M	0.66 x TDA + 3.18
		< 32	SVO.RC.L	2.2 x TDA + 6.85
		≤ -5	SVO.RC.I	2.79 x TDA + 8.7
	Horizontal Open (HZO)	≥ 32	HZO.RC.M	0.35 x TDA + 2.88
		< 32	HZO.RC.L	0.55 x TDA + 6.88
		≤ -5	HZO.RC.I	0.7 x TDA + 8.74
	Vertical Closed Transparent (VCT)	≥ 32	VCT.RC.M	0.15 x TDA + 1.95
		< 32	VCT.RC.L	0.49 x TDA + 2.61
		≤ -5	VCT.RC.I	0.58 x TDA + 3.05
	Horizontal Closed Transparent (HCT)	≥ 32	HCT.RC.M	0.16 x TDA + 0.13
		< 32	HCT.RC.L	0.34 x TDA + 0.26
		≤ -5	HCT.RC.I	0.4 x TDA + 0.31
	Vertical Closed Solid ("VCS")	≥ 32	VCS.RC.M	0.1 x V + 0.26
		< 32	VCS.RC.L	0.21 x V + 0.54
		≤ -5	VCS.RC.I	0.25 x V + 0.63
	Horizontal Closed Solid (HCS)	≥ 32	HCS.RC.M	0.1 x V + 0.26
		< 32	HCS.RC.L	0.21 x V + 0.54
		≤ -5	HCS.RC.I	0.25 x V + 0.63
	Service Over Counter (SOC)	≥ 32	SOC.RC.M	0.44 x TDA + 0.11
		< 32	SOC.RC.L	0.93 x TDA + 0.22
		≤ -5	SOC.RC.I	1.09 x TDA + 0.26
Self-Contained (SC)	Vertical Open (VOP)	≥ 32	VOP.SC.M	1.69 x TDA + 4.71
		< 32	VOP.SC.L	4.25 x TDA + 11.82
		≤ -5	VOP.SC.I	5.4 x TDA + 15.02
	Semivertical Open (SVO)	≥ 32	SVO.SC.M	1.7 x TDA + 4.59
		< 32	SVO.SC.L	4.26 x TDA + 11.51
		≤ -5	SVO.SC.I	5.41 x TDA + 14.63
	Horizontal Open (HZO)	≥ 32	HZO.SC.M	0.72 x TDA + 5.55
		< 32	HZO.SC.L	1.9 x TDA + 7.08
		≤ -5	HZO.SC.I	2.42 x TDA + 9
	Vertical Closed Transparent (VCT)	≥ 32	VCT.SC.M	0.1 x V + 0.86
		< 32	VCT.SC.L	0.29 x V + 2.95
		≤ -5	VCT.SC.I	0.62 x TDA + 3.29
	Vertical Closed Solid (VCS)	≥ 32	VCS.SC.M	0.05 x V + 1.36
		< 32	VCS.SC.L	0.22 x V + 1.38
		≤ -5	VCS.SC.I	0.34 x V + 0.88
	Horizontal Closed Transparent (HCT)	≥ 32	HCT.SC.M	0.06 x V + 0.37
		< 32	HCT.SC.L	0.08 x V + 1.23
		≤ -5	HCT.SC.I	0.56 x TDA + 0.43
	Horizontal Closed Solid (HCS)	≥ 32	HCS.SC.M	0.05 x V + 0.91
		< 32	HCS.SC.L	0.06 x V + 1.12
		≤ -5	HCS.SC.I	0.34 x V + 0.88
	Service Over Counter (SOC)	≥ 32	SOC.SC.M	0.52 x TDA + 1
		< 32	SOC.SC.L	1.1 x TDA + 2.1
		≤ -5	SOC.SC.I	1.53 x TDA + 0.36
	Pull-Down (PD)	≥ 32	PD.SC.M	0.11 x V + 0.81

*The term "V" means the chilled or frozen compartment volume (ft^3) as defined in the Association of Home Appliance Manufacturers ("AHAM") Standard HRF 1-2008. The term "TDA" means the total display area (ft^2) of the case, as defined in AHRI Standard 1200 -2006.

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b. Modifications to Equipment Classes and Definitions

Since the publication of the March 2014 Final Rule, there have been several proposed modifications to the equipment classes and definitions for CRE.

Chef Bases or Griddle Stands and High-Temperature Refrigerators

In the September 2023 Test Procedure Final Rule amending and establishing test procedures for CRE, DOE established and amended definitions and test procedures for high-temperature refrigerators, medium-temperature refrigerators, and chef bases or griddle stands. 88 FR 66152, 66154–66155. Specifically, DOE established definitions for ''high-temperature refrigerators'' and ''medium-temperature refrigerators,'' amended the definition for ''chef bases or griddle stands,'' and incorporated by reference AHRI Standard 1200–2023 (I–P), which provides an integrated average temperature (''IAT'') of 55 °F ± 2.0 °F for which high-temperature refrigerators may be tested. *Id.* DOE also established a definition for ''low-temperature freezers'' and amended the definition for ''ice-cream freezers.'' *Id.* The newly established and amended definitions in the September 2023 Test Procedure Final Rule for chef bases or griddle stand and high-temperature refrigerator are as follows:

Chef base or griddle stand means commercial refrigeration equipment that has a maximum height of 32 inches, including any legs or casters, and that is designed and marketed for the express purpose of having a griddle or other cooking appliance placed on top of it that is capable of reaching temperatures hot enough to cook food.[34]

High-temperature refrigerator means a commercial refrigerator that is not capable of an operating temperature at or below 40.0 °F.

In the June 2022 Preliminary TSD, DOE had initially determined that additional equipment classes may be appropriate to address certain CRE available on the market. Specifically, DOE initially determined to split several commercial refrigerator equipment classes and establish separate classes for high-temperature refrigerators. Also, DOE indicated that it was considering establishing standards for chef bases or griddle stands with operating temperatures of ≥ 32 °F or < 32 °F, because this equipment is currently excluded from energy conservation standards.[35] See chapter 3 of the June 2022 Preliminary TSD.

In the October 2023 NOPR, based on CRE models certified to DOE's Compliance Certification Database (''CCD'') under the lowest application product temperature[36] (''LAPT'') designation for commercial refrigerators, DOE proposed that high-temperature refrigerators be categorized under the self-contained and remote condensing unit configurations and under the VCT, VCS, SOC, VOP, SVO, and HZO equipment families. 88 FR 70196, 70213. For these equipment families with high-temperature equipment, DOE proposed to subcategorize them as high-temperature refrigerators (operating temperature greater than 40.0 °F) and medium-temperature refrigerators (operating temperature greater than or equal to 32.0 °F and less than or equal to 40.0 °F). *Id.* DOE proposed to maintain a single class for both medium and high temperature refrigerators, commercial refrigerator (operating temperature greater than or equal to 32.0 °F), for the remaining equipment families (*i.e.,* any horizontal closed transparent (''HCT''), horizontal closed solid (''HCS''), chef base or griddle stand (''CB''), or pull-down (''PD'') equipment that operates above 40 °F, if commercialized, would be considered a ''commercial refrigerator'' and required to comply with the ''medium-temperature refrigerator'' standard when tested at the LAPT). *Id.* For the October 2023 NOPR, DOE directly analyzed high-temperature refrigerators in the self-contained condensing unit configuration for the VCT and VCS equipment families. *Id.*

In the October 2023 NOPR, DOE also tentatively determined that chef bases or griddle stands can be categorized under the remote condensing or self-contained condensing unit configurations and the ≥ 32 °F or < 32 °F operating temperatures (*i.e.,* commercial refrigerator or low-temperature freezer, respectively). *Id.*

Therefore, in the October 2023 NOPR, DOE considered potential equipment classes for high-temperature refrigerators and chef bases or griddle stands and proposed potential equipment class structure modifications as presented in table IV.2. *Id.* at 88 FR 70214.

[34] The definition for ''chef base or griddle stand'' was established in the April 2014 CRE Test Procedure Final Rule. 79 FR 222778, 22282 (April 24, 2014). However, DOE has not, prior to this rulemaking, established standards for chef bases or griddle stands.

[35] See 10 CFR 431.66(f).

[36] Lowest application product temperature means the integrated average temperature (or for buffet tables or preparation tables, the average pan temperature of all measurements taken during the test) at which a given basic model is capable of consistently operating that is closest to the integrated average temperature (or for buffet tables or preparation tables, the average pan temperature of all measurements taken during the test) specified for testing under the DOE test procedure. 10 CFR 431.62.

Table IV.2 October 2023 NOPR Proposed Equipment Classes and Equipment Class Modifications

Condensing Unit Configuration	Equipment Family	Rating Temperature**	Operating Temperature (°F)	Equipment Class Designation
Self-Contained (SC)	Vertical Open (VOP)	HR (55 °F)	x > 40	VOP.SC.H*
		MR (38 °F)	40 ≥ x ≥ 32	VOP.SC.M
		LF (0 °F)	x < 32	VOP.SC.L
		IF (-15 °F)	x ≤ -13	VOP.SC.I
	Semivertical Open (SVO)	HR (55 °F)	x > 40	SVO.SC.H*
		MR (38 °F)	40 ≥ x ≥32	SVO.SC.M
		LF (0 °F)	x < 32	SVO.SC.L
		IF (-15 °F)	x ≤ -13	SVO.SC.I
	Horizontal Open (HZO)	HR (55 °F)	x > 40	HZO.SC.H*
		MR (38 °F)	40 ≥ x ≥ 32	HZO.SC.M
		LF (0 °F)	x < 32	HZO.SC.L
		IF (-15 °F)	x ≤ -13	HZO.SC.I
	Vertical Closed Transparent (VCT)	HR (55 °F)	x > 40	VCT.SC.H*
		MR (38 °F)	40 ≥ x ≥ 32	VCT.SC.M
		LF (0 °F)	x < 32	VCT.SC.L
		IF (-15 °F)	x ≤ -13	VCT.SC.I
	Vertical Closed Solid (VCS)	HR (55 °F)	x > 40	VCS.SC.H*
		MR (38 °F)	40 ≥ x ≥ 32	VCS.SC.M
		LF (0 °F)	x < 32	VCS.SC.L
		IF (-15 °F)	x ≤ -13	VCS.SC.I
	Horizontal Closed Transparent (HCT)	CR (38 °F)	x ≥ 32	HCT.SC.M
		LF (0 °F)	x < 32	HCT.SC.L
		IF (-15 °F)	x ≤ -13	HCT.SC.I
	Horizontal Closed Solid (HCS)	CR (38 °F)	x ≥ 32	HCS.SC.M
		LF (0 °F)	x < 32	HCS.SC.L
		IF (-15 °F)	x ≤ -13	HCS.SC.I
	Service Over Counter (SOC)	HR (55 °F)	x > 40	SOC.SC.H*
		MR (38 °F)	40 ≥ x ≥ 32	SOC.SC.M
		LF (0 °F)	x < 32	SOC.SC.L
		IF (-15 °F)	x ≤ -13	SOC.SC.I
	Pull-Down (PD)	CR (38 °F)	x ≥ 32	PD.SC.M
	Chef Base or Griddle Stand (CB)	CR (38 °F)	x ≥ 32	CB.SC.M*
		LF (0 °F)	x < 32	CB.SC.L*
	Vertical Open (VOP)	HR (55 °F)	x > 40	VOP.RC.H*
		MR (38 °F)	40 ≥ x ≥ 32	VOP.RC.M
		LF (0 °F)	x < 32	VOP.RC.L
		IF (-15 °F)	x ≤ -13	VOP.RC.I
	Semivertical Open (SVO)	HR (55 °F)	x > 40	SVO.RC.H*
		MR (38 °F)	40 ≥ x ≥ 32	SVO.RC.M
		LF (0 °F)	x < 32	SVO.RC.L
		IF (-15 °F)	x ≤ -13	SVO.RC.I
	Horizontal Open (HZO)	HR (55 °F)	x > 40	HZO.RC.H*
		MR (38 °F)	40 ≥ x ≥ 32	HZO.RC.M
		LF (0 °F)	x < 32	HZO.RC.L

Remote Condensing (RC)		IF (-15 °F)	x ≤ -13	HZO.RC.I
	Vertical Closed Transparent (VCT)	HR (55 °F)	x > 40	VCT.RC.H*
		MR (38 °F)	40 ≥ x ≥ 32	VCT.RC.M
		LF (0 °F)	x < 32	VCT.RC.L
		IF (-15 °F)	x ≤ -13	VCT.RC.I
	Horizontal Closed Transparent (HCT)	CR (38 °F)	x ≥ 32	HCT.RC.M
		LF (0 °F)	x < 32	HCT.RC.L
		IF (-15 °F)	x ≤ -13	HCT.RC.I
	Vertical Closed Solid (VCS)	HR (55 °F)	x > 40	VCS.RC.H*
		MR (38 °F)	40 ≥ x ≥ 32	VCS.RC.M
		LF (0 °F)	x < 32	VCS.RC.L
		IF (-15 °F)	x ≤ -13	VCS.RC.I
	Horizontal Closed Solid (HCS)	CR (38 °F)	x ≥ 32	HCS.RC.M
		LF (0 °F)	x < 32	HCS.RC.L
		IF (-15 °F)	x ≤ -13	HCS.RC.I
	Service Over Counter (SOC)	HR (55 °F)	x > 40	SOC.RC.H*
		MR (38 °F)	40 ≥ x ≥ 32	SOC.RC.M
		LF (0 °F)	x < 32	SOC.RC.L
		IF (-15 °F)	x ≤ -13	SOC.RC.I

* Proposed new equipment class.

** HR – High-Temperature Refrigerator
LF – Low Temperature Freezer
MR – Medium-Temperature Refrigerator
IF – Ice-Cream Freezer
CR – Commercial Refrigerator

In response to the October 2023 NOPR, ASAP *et al.* commented that they supported DOE's proposed standards for chef bases or griddle stands, which for medium- and low-temperature chef bases or griddle stands (CB.SC.M, CB.SC.L) would reduce energy usage by over 50 percent versus a baseline unit and provide significant cost savings for purchasers. (ASAP *et al.,* No. 79 at p. 2) ASAP *et al.* supported DOE's proposed standards for high-temperature refrigerators, stating that by moving away from existing medium-temperature standards, the new procedure better accounts for expected differences in energy use between medium- and high-temperature units. (*Id.*)

In this final rule, DOE is finalizing definitions and new equipment classes as proposed in the October 2023 NOPR for high-temperature refrigerators, medium-temperature refrigerators, ice-cream freezers, low-temperature freezers, and chef bases or griddle stands. In this final rule, DOE is also finalizing the same equipment class modifications, as proposed in the October 2023 NOPR, outlined in table IV.2.

New and Amended Definitions Adopted in This Final Rule

To account for the unique features and different energy use characteristics of certain types of CRE, in the October 2023 NOPR, DOE proposed to allow certain equipment classes that contain CRE with unique design characteristics, such as forced-air evaporators, pass-through doors, roll-in doors, roll-through doors, and sliding doors, to use a higher amount of energy than the newly proposed standards for their counterpart equipment without these features, defined using a ''multiplier'' value unique for each characteristic such that maximum energy use for a model with the characteristic is equal to the multiplier multiplied by the unadjusted maximum energy use for the equipment class. As proposed in the October 2023 NOPR, this equipment has the specified performance-related features and different maximum energy use to represent separate additional equipment classes. The multiplier values were selected with consideration that maximum allowed energy use for these models would comply with EPCA's ''anti-backsliding'' provision. 88 FR 70196, 70213. Therefore, in the October 2023 NOPR, DOE proposed definitions, to distinguish models with the unique design features, for the terms ''cold-wall evaporator,'' ''forced-air evaporator,'' ''pass-through doors,'' ''roll-in door,'' ''roll-through doors,'' and ''sliding door,'' at 10 CFR 431.62. 88 FR 70196. *Id.* at 88 FR 70212–70213. These definitions, as proposed in the October 2023 NOPR, are as follows:

Cold-wall evaporator means an evaporator that comprises a portion or all of the commercial refrigerator, freezer, and refrigerator freezer cabinet's interior surface that transfers heat through means other than fan-forced convection.

Forced-air evaporator means an evaporator that employs the use of fan-forced convection to transfer heat within the commercial refrigerator, freezer, and refrigerator-freezer cabinet.

Pass-through doors means doors located on both the front and rear of the commercial refrigerator, freezer, and refrigerator-freezer.

Roll-in door means a door that includes a door sweep to seal the bottom of the door and may include a ramp that allows wheeled racks of product to be rolled into the commercial refrigerator, freezer, and refrigerator-freezer.

Roll-through doors means doors located on both the front and rear of the commercial refrigerator, freezer, and

refrigerator-freezer, that includes a door sweep to seal the bottom of the door and may include a ramp that allows wheeled racks of product to be rolled into and through the commercial refrigerator, freezer, and refrigerator-freezer.

Sliding door means a door that opens when a portion of the door moves in a direction generally parallel to its surface.

Section IV.C.1.a of this document discusses energy use allowances for CRE with the unique features defined in this section.

In the October 2023 NOPR, DOE also reviewed the current definitions for CRE at 10 CFR 431.62 and proposed to revise the definition for ''rating temperature'' to update the reference to the required IAT or LAPT, as applicable, as follows:

Rating temperature means the integrated average temperature a unit must maintain during testing, as determined in accordance with section 2.1 or section 2.2 of appendix B to subpart C of part 431, as applicable.

In response to the October 2023 NOPR, SCC agreed with DOE's definitions for ''cold-wall evaporator,'' ''forced-air evaporator,'' ''pass-through door,'' ''roll-in door,'' ''roll-through door,'' ''sliding door,'' and ''rating temperature.'' (SCC, No. 74 at p. 3)

In response to the October 2023 NOPR, DOE received comments suggesting additional design features that should be provided additional energy use allowance, and definitions to distinguish them. ITW and Delfield recommended that DOE add definitions and energy use allowances for cabinets with drawers. (ITW, No. 82 at pp. 2, 4; Delfield, No. 71 at p. 2)

Based on these comments and DOE's review of energy use differences between door and drawer units—discussed in section IV.C.1.c of this document—DOE is establishing a definition for ''drawer unit'' in this final rule. Commenters did not provide specific suggestions regarding a definition for drawer, hence DOE reviewed the definition of ''drawer unit'' at 20 California Code of Regulations (''CCR'') § 1602, and DOE is establishing the following definition for ''drawer unit'' in this final rule:

Drawer unit means a commercial refrigerator, freezer, or refrigerator-freezer in which all the externally accessed compartments are drawers.

In response to the October 2023 NOPR, SCC and AHRI commented that rear-door definitions should be added for SVO and VOP models to allow more energy for rear door options. (SCC, No. 74 at p. 3; AHRI, No. 81 at p. 5)

DOE notes that commenters did not provide data or other information to suggest that SVO or VOP equipment with rear doors use more energy than the representative unit. For this reason, DOE is not expanding the definitions to include SVO or VOP equipment classes.

In summary, in this final rule, DOE is maintaining the definitions proposed in the October 2023 NOPR for ''cold-wall evaporator,'' ''forced-air evaporator,'' ''pass-through door,'' ''sliding door,'' ''rating temperature,'' ''roll-in door,'' and ''roll-through door.'' In this final rule, DOE is also establishing the ''drawer unit'' definition. Energy conservation standards, in terms of kWh/day, established in this final rule for equipment of certain classes which have these performance-related features allow for a higher maximum energy consumption (*i.e.,* less stringent) than the standards of the corresponding classes without these performance-related features, consistent with EPCA's requirements for establishing separate equipment classes. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(q)) More detail regarding these classes is provided in IV.C.1.c of this document.

Units Under 30 Cubic Feet

In response to the October 2023 NOPR, NAMA commented that DOE does not fully account for the existence of smaller self-contained, refrigerated single- and double-door beverage and food coolers. (NAMA, No. 85 at p. 5) NAMA hypothesizes that inaccuracies in the October 2023 NOPR analysis (*e.g.,* engineering, shipments, economic impact, and utility impact) are due to DOE's focus on larger-capacity equipment than 24-cubic-foot (ft^3) CRE models that are typical of the market for NAMA's members. (*Id.*) NAMA stated that what may apply in cost and energy efficiency for a 60-ft^3 unit may not apply to a 24-ft^3 unit. (*Id.* at p. 6) NAMA stated that doors, insulation, fan motors, compressors, and evaporator coils would be different for 30-ft^3 models compared to 60-ft^3 models. (*Id.*) NAMA commented that, for DOE's analysis, units under 30 ft^3 should be considered as different from those over 30 ft^3 in refrigerated volume. (*Id.*) Furthermore, NAMA commented that between the June 2022 Preliminary Analysis and October 2023 NOPR, DOE changed the categories of products to include a number of door types but did not acknowledge that the capacity also causes a significant difference in cost and efficiency. (*Id.*) Therefore, NAMA recommended that DOE split the VCT.SC.M units into two categories because the characteristics are considerably different for units under 30 cubic feet than for those over 30 ft^3. (*Id.*) In response the August 2024 NODA, NAMA commented that DOE did not address its request to split VCT.SC.M, VOP.SC.M, and HZO.SC.L units under 30 cubic feet into separate categories, and that the NODA analysis has not substantially changed the overall impact to reflect that these products do not use as much energy as the larger units because the characteristics are considerably different compared to larger units. (NAMA, No. 112 at pp. 4–5)

In response to the October 2023 NOPR, NAMA and NAFEM commented that some components that are available for large grocery store machines are not available for smaller units using R–290 refrigerant. (*Id.;* NAFEM, No. 83 at p. 16)

In response to similar comments regarding components for models using R–290 refrigerant made by NAMA during the November 2023 public meeting, True Manufacturing Company, Inc. (''True'') stated that, when it comes to self-contained CRE, the component availability to transition to R–290 is already there. (Public Meeting Transcript, No. 64 at p. 74) True added that even today, it is more expensive to buy a shaded pole motor than an ECM, and ECMs available today all comply with all the regulations needed for non-sparking. (*Id.* at p. 75)

In response to these comments, DOE notes that, based on currently available compressors for small self-contained units, R–290 and R–600a refrigerant compressors are the most widely available compressor types. DOE also notes that the smallest model currently available in DOE's CCD [37] for VCT.SC.M uses R–600a. In addition, as described in section IV.A.3.a, DOE analyzed an average compressor efficiency to account for a wide range of use cases.

In response to the comment from True, DOE agrees with True that R–290 compatible components are currently available for self-contained CRE, including CRE that have a volume of less than 30 ft^3. DOE conducted a review of the CRE market, based on directly analyzed units and publicly available information (*e.g.,* specification sheets), and found no evidence of a difference in availability of R–290 compatible components used in less-than- 30- ft^3 models compared to larger models. Therefore, without additional data, DOE disagrees that there is a need for smaller equipment classes to analyze a different design option pathway than larger R–290 units.

In response to NAMA's comments regarding the applicability of the cost

[37] See *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A*.*

and energy efficiency for a 60-ft^3 unit compared to a 24-ft^3 unit, DOE notes that the representative analyzed volume for the VCT.SC.M class in the October 2023 NOPR was 49 ft^3, not 60 ft^3, and the representative volume has two doors (see table 5A.2.6 in the October 2023 NOPR TSD) which is within the range of number of doors that NAMA commented is typical of the market for NAMA's members. DOE reviewed the list of CRE manufacturers it identified as NAMA members in chapter 3, section 3.2.3.1 of the final rule TSD and found that these manufacturers have VCT.SC.M models with rated volumes of up to 63.32 ft^3 and two doors. A majority of these manufacturers also have models with certified volumes close to the VCT.SC.M representative volume analyzed in this final rule (*e.g.,* 43.75 ft^3, 41.11 ft^3, and 40.7 ft^3).

DOE is maintaining the 49 ft^3 representative volume for the VCT.SC.M ($V \leq 100$) class in this final rule. Using information available to DOE at the time of this final rule regarding components and dimensions that would be used in CRE models with approximately 24 ft^3, DOE conducted an analysis using its engineering spreadsheet to estimate the energy use of a CRE model with 24 ft^3 and concluded that the analysis is representative of test results for such a model. DOE has determined that including a representative volume of 24 ft^3 for the VCT.SC.M class would not significantly affect results and conclusions for the VCT.SC.M ($V \leq 100$) class regarding efficiency levels that would be cost-effective. Therefore, DOE has determined that DOE's analysis accounts for CRE across the full capacity range of the VCT.SC.M ($V \leq 100$) class, not just at the representative capacity, and, in the August 2024 NODA and this final rule, DOE did not present an analysis for CRE models with a volume of less than 30 ft^3.

c. Equipment Without Standards Proposed in the October 2023 NOPR

In the October 2023 NOPR, due to a lack of data and information regarding performance and related design options of refrigerated buffet tables and preparation tables and blast chillers and blast freezers, DOE did not conduct an analysis of potential energy conservation standards for these equipment categories. 88 FR 70196, 70215–70216. DOE requested comment on refrigerated buffet and preparation tables and blast chillers and blast freezer design options, design specifications, and energy consumption data tested per the DOE test procedures located in appendices C and D of 10 CFR 431.64. *Id.*

In response to the October 2023 NOPR, SCC, Hoshizaki, AHRI, and Continental commented that manufacturers have not had time to test their equipment and evaluate the test procedure and agreed with DOE's tentative determination to not include energy conservation standards for buffet and preparation tables in this rulemaking. (SCC, No. 74 at p. 3; Hoshizaki, No. 76 at p. 2; AHRI, No. 81 at p. 6; Continental, No. 86 at p.2) Hoshizaki offered to make chef bases or griddle stands, preparation tables, or other model samples available to DOE to help create the most accurate rulemaking possible. (Hoshizaki, No. 76 at p. 7)

In contrast, in response to the October 2023 NOPR, NEEA and NWPCC recommended that DOE include blast chillers and blast freezers and buffet tables in the scope of CRE energy conservation standards, develop a test procedure for blast chillers/freezers, and conduct analysis on the energy-saving potential for blast chillers/freezers and buffet tables. (NEEA and NWPCC, No. 89 at pp. 2–3) NEEA and NWPCC commented that by developing a test procedure that is applicable for their design intent, DOE could solve the issues of: (1) inadequate performance data and information for blast chillers and freezers, and (2) inapplicability of the established CRE test procedure for the design intent of ''rapid temperature pull-down'' (versus other typical CRE categories, which are intended for ''holding temperature application''). (*Id.*) NEEA and NWPCC added that test procedures are particularly important for these classes because they are key to allowing the missing data to be collected, and NEEA and NWPCC recommended that DOE gather information on test methodology from all interested parties. (*Id.*) Regarding buffet tables, NEEA and NWPCC commented that because an established test procedure exists, DOE should gather performance data and then conduct an energy-savings analysis and consider standards for these equipment classes. (*Id.*)

Consistent with the October 2023 NOPR and comments received in response to that proposal, DOE has determined that it lacks sufficient data and information regarding blast chillers and blast freezer performance and related design options for units tested via the DOE test procedure. As stated in the September 2023 Test Procedure Final Rule, blast chillers and blast freezers are designed for ''rapid temperature pull-down'' capable of reducing the internal temperature from 135 °F to 40 °F within a period of 4 hours. 88 FR 66152, 66189. Therefore, DOE is not currently able to model expected performance of this equipment, because the established test procedure is significantly different from the test procedure applicable to other CRE categories, which are intended for ''holding temperature application.'' Due to a lack of data and information regarding performance of blast chillers and blast freezers, DOE has not conducted an analysis of potential energy conservation standards for these equipment categories in this final rule.

With regard to buffet tables and preparation tables, while DOE acknowledges that California Energy Commission's (''CEC's'') Modernized Appliance Efficiency Database System (''MAEDbS'') contains data for buffet and preparation tables, DOE notes that Title 20 of the CCR requires refrigerated buffet and preparation tables to follow the American National Standards Institute (''ANSI'')/American Society for Testing and Materials (''ASTM'') F2143–01 test method.[38] This test method has been revised several times, with ASTM F2143–16 being the most recent version. In the September 2023 Test Procedure Final Rule, DOE stated that ASTM F2143–16 cannot be referenced as a stand-alone test method, but it determined the approach based on ASTM F2143–16 with additional requirements is representative for buffet and preparation tables. 88 FR 66152, 66175. Therefore, in this final rule, DOE is not able to model expected performance of this equipment at this time because the established test procedure is significantly different from the test procedure applicable to other CRE categories and from the test procedure used to measure energy consumption for CEC's MAEDbS. Due to a lack of data and information regarding performance and related design options of refrigerated buffet and preparation tables, DOE has not conducted an analysis of potential energy conservation standards for these equipment categories in this final rule.

In this final rule, consistent with the October 2023 NOPR, DOE is not establishing energy conservation standards for buffet tables or preparation tables, blast chillers, or blast freezers.

However, any representations, including for certification of compliance, made with respect to the energy use or efficiency of buffet tables

[38] See table A–1 in 20 CCR § 1604.a.2 located at *govt.westlaw.com/calregs/Document/I132868504AC611EF8D0AD9C609AF9EC3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default).*

or preparation tables, blast chillers, and blast freezers must be made in accordance with the results of testing pursuant to appendices C and D of 10 CFR 431.64.

DOE will continue to evaluate buffet tables or preparation tables, blast chillers, and blast freezers for potential future energy conservation standards rulemakings, and DOE continues to request data and information for this equipment.

d. Pull-Down Equipment

In response to the October 2023 NOPR, ASAP *et al.* encouraged DOE to consider amended standards for PD equipment that are consistent with the efficiency improvements required for other CRE equipment classes, stating that while no PD.SC.M models are certified in DOE's CCD, a unit could be certified as a PD unit in order to be subject to a less stringent standard—a concern stated by ASAP *et al.* in the past. (ASAP *et al.,* No. 79 at p. 4) ASAP *et al.* commented that current standards for a 49-ft^3 unit (the VCT.SC.M representative volume in the October 2023 NOPR analysis) permit about 8 percent more energy usage (6.20 kWh/day) for a PD.SC.M versus a VCT.SC.M unit of the same volume (5.76 kWh/day). (*Id.*) ASAP *et al.* commented that under DOE's proposal in the October 2023 NOPR, the 49-ft^3 PD.SC.M unit would be permitted to use nearly 80 percent more energy than a VCT.SC.M of the same volume (3.51 kWh/day). (*Id.*) ASAP *et al.* commented that manufacturers might design equipment that meets the ''pull-down'' definition to be subject to less stringent standards due to the September 2023 Test Procedure Final Rule establishing verification provisions for PD temperature applications. (*Id.*)

With respect to the comment from ASAP *et al.,* the ''pull-down temperature application'' is defined in 42 U.S.C. 6311(9)(d) and the equipment class was established by the Energy Policy Act of 2005 (Pub. L. 109–58).[39] In the September 2023 Test Procedure Final Rule, DOE established verification provisions for pull-down temperature applications based on the EPCA definition, which are intended to ensure CRE are certified correctly as pull-down temperature applications. See 88 FR 66152, 66187–66189. DOE anticipates that it is unlikely that manufacturers would design equipment that meets the ''pull-down temperature application'' definition to be subject to less stringent standards because manufacturers do not appear to be doing so in response to the current DOE CRE standards. For example, there are no models currently certified to DOE's CCD in the PD.SC.M class,[40] and the PD.SC.M energy use standard is less stringent than the comparable VCT.SC.M- class energy use standard above 5 ft^3. Consistent with the October 2023 NOPR, DOE did not directly analyze the pull-down, self-contained, medium temperature equipment class as a primary equipment class in this final rule. DOE has determined to maintain the current standard level for PD.SC.M because DOE did not receive any data or feedback regarding energy use characteristics and design options of PD equipment. DOE will continue to monitor the PD.SC.M equipment class and any models certified to this class, including assessment testing and verification of any model's ability to meet the pull-down temperature application definition.

2. CRE Market

In the October 2023 NOPR, DOE requested comment on publicly available market data on CRE manufacturers or identification of any CRE manufacturers with large market shares not identified in chapter 3 of the October 2023 NOPR TSD. 88 FR 70196, 70218.

AHRI provided a list of known suppliers of CRE products for the United States that are not listed on the CCD site: Amteko Industries, Inc.; Atlantic Food Bars; Borgen Merchandising Systems; Buffalo Outfront; Carrier; Cayuga Displays; Custom Deli's Inc.; Duke Manufacturing Co.; Federal Industries; GTI Designs; MTL COOL, a Due North brand; NAFCOOL; Picadeli; Pure Cold; USR Brands; Unity® Commercial Refrigeration; and Vortex Refrigeration. (AHRI, No. 81 at p. 6)

As part of DOE's market assessment for the October 2023 NOPR and this final rule, DOE compiled an equipment database of CRE models available in the United States. To develop a comprehensive equipment database of CRE basic models, DOE reviewed its CCD [41] supplemented by information from CEC's MAEDbS,[42] individual company websites, stakeholder comments (see AHRI, No. 81 at p. 6), and prior CRE rulemakings. To identify chef bases or griddle stands and high-temperature units, DOE reviewed publicly available data from web scraping of retail websites. DOE then reviewed its comprehensive equipment database to identify the original equipment manufacturers (''OEMs'') of the CRE models identified. DOE compared the list of suppliers provided by AHRI against its list of CRE manufacturers to ensure completeness. Based on this comparison, DOE amended its market assessment (see chapter 3 of the final rule TSD) to include two additional small, domestic OEMs, Atlantic Food Bars and Borgen Merchandising Systems, for this final rule. DOE determined that both OEMs would qualify as small, domestic businesses. Therefore, for this final rule, DOE updated its small business assessment and included these companies in its small business manufacturer subgroup analysis (*i.e.,* ''regulatory flexibility analysis'') discussed in section VI.B of this document.

3. Technology Options

In the October 2023 NOPR market analysis and technology assessment, DOE identified technology options initially determined to improve the efficiency of CRE, as measured by the DOE test procedure and shown in table IV.3.

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[39] See 119 STAT. 639 at *www.govinfo.gov/content/pkg/PLAW-109publ58/pdf/PLAW-109publ58.pdf.*

[40] See *www.regulations.doe.gov/certification-data/CCMS-4-Refrigeration_Equipment_-_Commercial__Single_Compartment.html#q=Product_Group_s%3A%22Refrigeration%20Equipment%20-%20Commercial%2C%20Single%20Compartment%22.*

[41] U.S. Department of Energy's Compliance Certification Database is available at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (last accessed Jan. 31, 2024).

[42] California Energy Commission's Modernized Appliance Efficiency Database is available at *cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (last accessed Jan. 31, 2024).

Table IV.3 Technology Options for CRE

Insulation	**Evaporator**
Improved resistivity of insulation (insulation type)	Increased surface area
Increased insulation thickness	Improved evaporator coil design
Vacuum-insulated panels	Low-pressure differential evaporator
Lighting	**Condenser****
Higher-efficiency lighting	Increased surface area**
Occupancy sensors	Tube-and-fin enhancements**
Improved transparent doors*	Microchannel condenser**
Low-emissivity coatings*	**Fans and fan motors**
Inert gas fill*	Evaporator fan motors
Vacuum-insulated glass*	Evaporator fan blades
Additional panes*	Evaporator fan controls
Anti-sweat heater controls*	Condenser fan motors**
Anti-fog films*	Condenser fan blades**
Frame design*	Condenser fan controls**
Compressors**	**Other technologies**
Improved compressor efficiency**	Defrost systems
Alternative refrigerants**	Expansion valve improvements
Variable-speed compressors**	Air-curtain design***
Linear compressors**	Night curtains***
	Liquid suction heat exchanger**

* Only applies to equipment classes with doors

** Only applies to self-contained equipment classes

*** Only applies to equipment classes without doors (open equipment classes)

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88 FR 70196, 70244.

DOE received several comments on the technology options presented in the October 2023 NOPR. DOE received general comments regarding the technology options along with comments specifically regarding single-speed compressors, expansion valves, and doors for open units. These are discussed in the following paragraphs.

In response to the October 2023 NOPR, and the August 2024 NODA, Hillphoenix commented that the many other additional regulatory changes underway have narrowed manufacturers' ability to explore new energy-efficient technologies. (Hillphoenix, No. 77 at p. 2; Hillphoenix, No. 110 at p. 2)

DOE appreciates Hillphoenix's candor in indicating that they have little quantitative information to provide regarding energy savings potential for some of the newer technology options. In this final rule, DOE has not analyzed technologies that fail the screening criteria, including ''technologies that are not incorporated in commercial equipment or in commercially viable, existing prototypes will not be considered further''. DOE has undertaken its analysis based on the best information available.

In response to the October 2023 NOPR, NAFEM commented that meeting that the October 2023 NOPR's proposed standards may force reductions in the capacity of certain CRE, which reduces its utility and may lead to increased energy consumption. (NAFEM, No. 83 at pp. 22–23) NAFEM stated that many of its members shared a concern that substantially bulking up insulation may be the only way to meet many of the standards outlined in the October 2023 NOPR, which eats into the capacity of CRE models and may force customers to add more energy-using equipment to store the same amount of product—equipment that impacts the environment. (*Id.* at p. 23) NAFEM commented that this is another reason why refurbished equipment might be the only choice for some customers. (*Id.*) NAFEM added that its members fear that customers may ''tinker'' with products to circumvent efficiency measures to achieve a better-performing product, with the end result being that DOE's targeted energy-efficiency gains will never materialize in practice, and that the proposed standards may even cause an increase in energy consumption. (*Id.*)

In response to this comment from NAFEM, DOE notes that the screening criteria in section IV.B of this document screens out any technology options that are determined to have ''a significant adverse impact on the utility of the equipment to subgroups of consumers, or result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time,'' including increased insulation thickness and other technologies that affect internal or external dimensions. Additionally, the baseline insulation thicknesses analyzed in this final rule were revised from the October 2023 NOPR, consistent with comments received in response to the October 2023 NOPR. See section IV.B.1.a of this document for more details on the screening analysis for the increased insulation thickness technology option and section IV.C.1.a.iii of this document for more details on the revised baseline insulation thicknesses. Additionally, see sections IV.F.7 and IV.G of this document for a detailed discussion on refurbished equipment.

a. High-Efficiency Single-Speed Compressors

In the October 2023 NOPR, DOE considered the design option of

improved compressor efficiency, which would have consisted of applying a compressor with improved energy efficiency in comparison to the baseline compressor analyzed. 88 FR 70196, 70228. In the October 2023 NOPR, DOE presented a baseline for self-contained equipment based on R–290 and expected the energy efficiency improvement associated with the change to R–290 to be due to the compressor. *Id.* DOE did not directly analyze an improved compressor efficiency design option beyond the R–290 baseline. *Id.*

In the August 2024 NODA, DOE updated its analysis of R–290 compressor performance to reflect the average compressor efficiency from the database of CRE compressors it has collected, instead of the maximum compressor efficiency as considered in the October 2023 NOPR. 89 FR 68788, 68792–68793. DOE was able to incorporate into the August 2024 NODA compressor data that was not available to DOE for the October 2023 NOPR. *Id.* In the August 2024 NODA, DOE presented updated baseline energy use associated with each equipment class, expressed as a reduction in energy compared to the currently applicable standard. *Id.* Additionally, in the August 2024 NODA, based on the AHRI January 2017 white paper, Tolerances and Uncertainties in Performance Data of Refrigerant Compressors, which is referenced by the AHRI 540 compressor performance rating standard (''AHRI 540''),[43] DOE revised its calculation of energy use for all compressors to be 5 percent higher than calculated using compressor performance coefficients, to account for the uncertainty associated with compressor energy performance prediction using coefficients that are determined based on a limited number of compressor tests. *Id.*

In response to the October 2023 NOPR, the CA IOUs and ASAP *et al.* recommended that DOE consider more efficient single-speed compressors as a design option in the engineering analysis. (CA IOUs, No. 84 at pp. 2–3; ASAP *et al.,* No. 79 at pp. 3–4) The CA IOUs commented that the single-speed compressor efficiency upgrades may be more cost-effective than variable-speed compressors. (CA IOUs, No. 84 at p. 3) The CA IOUs further commented that the energy efficiency ratio (''EER'') for R–290 single-speed compressors varies between 5.8 to 7.4 Btu/kWh in the capacity range of 5,000 to 6,000 Btu/h and between 6.0 to 7.5 Btu/kWh in the capacity range of 4,000 to 5,000 Btu/h. (*Id.* at p. 2) The CA IOUs additionally stated that upgrading to the most energy-efficient single-speed compressors may add a minimal marginal cost to the unit's price. (*Id.* at p. 3) ASAP *et al.* stated there appears to be a range of R–290 single-speed compressor efficiencies available for a given compressor type, capacity, input voltage, and power supply (*i.e.,* single vs. polyphase) and asked DOE to further consider improved single-speed compressor efficiency. (ASAP *et al.,* No. 79 at pp. 3–4)

In response to the August 2024 NODA, ASAP et al. commented that DOE's analysis overstates energy use of compressors due to increasing energy use in the calculations by 5 percent, using the average efficiency of available R–290 compressors (even though manufacturers have the option to use the highest efficiency compressors), and the expectation that additional high-efficiency compressors will be introduced to the market in advance of the compliance date of amended standards. (ASAP et al, No. 106 at p. 3)

The CA IOUs recommended that DOE reduce its Compressor Energy Use Adjustment from 5% to no more than 2.5%. (CA IOUs, No. 113, at p. 4) The CA IOUs commented that the AHRI white paper does not specify whether these curve-fitting methodologies tend to overestimate or underestimate compressor performance, so the uncertainty should not be assumed to be biased in either direction. (*Id.*)

In response to the CA IOUs and ASAP et al., DOE notes that the R–290 compressor market is still evolving due to the October 2023 EPA Final Rule and other refrigerant related rulemakings associated with the AIM Act. Because of this, DOE cannot confidently assert that all manufacturers would be able to easily source the most efficient compressors available for all equipment classes. DOE notes that the most efficient compressor for a CRE unit varies based on many factors such as temperature application (*i.e.,* high, medium, low, or ice-cream temperature), unit capacity (*i.e.,* rated TDA or Volume), and physical differences in the units (*e.g.,* open versus closed, horizontal versus vertical, compressor space constraints). As a result, in this final rule, consistent with the August 2024 NODA, DOE has analyzed the average compressor efficiency based on the compressor data available at the time of this rulemaking. See section IV.C.1.a.ii for a discussion of the results of this baseline energy use analysis.

In response to the ASAP et al. and CA IOUs comments on the 5 percent compressor adjustment that was applied for all compressors in the August 2024 NODA, DOE notes that the August 2024 NODA analysis was recalibrated to accommodate updates made since the October 2023 NOPR analysis, including the 5 percent compressor adjustment, such that the analyzed baseline energy use is representative of baseline equipment. As discussed by commenters in the October 2023 NOPR, and the AHRI January 2017 white paper, this 5 percent compressor adjustment is appropriate based on the uncertainty tolerances for compressor performance coefficients, and therefore DOE disagrees that the energy use of the compressors are overstated.

In response to the August 2024 NODA, Storemasters commented that equipment manufacturers have already made significant changes to equipment to comply with the 2017 standards and much of the current equipment incorporates new refrigerants, particularly self-contained models that utilize R–290. (Storemasters, No. 68 at p. 1)

As discussed later in section IV.C.1.a.ii, DOE does acknowledge that many CRE units have already transitioned to R–290 refrigerant. However, for most equipment classes, R–290 refrigerant is used in units that use less energy than the current standard allows. Therefore, DOE conducted an analysis to determine an appropriate baseline for equipment classes using R–290 refrigerant, which is discussed in detail in section IV.C.1.a.ii.

b. Expansion Valves

As discussed in chapter 5 of the October 2023 NOPR TSD, higher-efficiency expansion valves can control the flow of refrigerant to adapt to varying loads and ambient conditions, reducing the energy consumption in some CRE units. However, in the October 2023 NOPR analysis, DOE did not consider improved thermal expansion valves as a design option, because this technology is not likely to improve energy efficiency across all equipment classes.

In response to the October 2023 NOPR, the CA IOUs recommended that DOE consider thermal expansion valves (''TXVs'') as a technology option over capillary tubes for self-contained refrigeration equipment. (CA IOUs, No. 84 at p. 4) The CA IOUs commented that TXVs are more efficient than simple fixed orifice capillary tubes at regulating refrigerant flow under changing load conditions and save energy at the compressor, especially at very low load conditions (*e.g.,* an infrequently opened door). (*Id.*) The CA IOUs additionally

[43] For the AHRI white paper see *www.ahrinet.org/system/files/2023-06/compressors-white-paper.pdf.*

stated that the DOE test procedure, based on ASHRAE 72, requires 16 hours with no door openings for refrigeration units and can capture the energy savings of TXVs in self-contained units. (*Id.*)

The CA IOUs also recommended that DOE include electronic expansion valves (''EEVs'') as a design option for remote condensing units, as EEVs are a reliable and cost-effective technology that provide a lower stable superheat than TXVs, allowing more of the evaporator surface to be utilized in latent energy exchange, reducing compressor run times, and resulting in a 10-to-20-percent reduction in energy use for these units. (*Id.* at pp. 3–4)

In response to the comment from the CA IOUs regarding expansion valves for self-contained equipment, DOE notes that many self-contained refrigeration systems likely already use TXVs. In addition, the range of conditions experienced by most self-contained refrigeration systems during the DOE test procedure are very limited (IAT must be maintained within ± 2 °F), and the refrigerant mass flow is determined more by the capacity of the compressors used in most models than the thermal load. Also, the pressure available to move refrigerant through the expansion device is mostly influenced by the ambient temperature, which does not vary significantly during the DOE test procedure. Finally, for closed cabinets the variation in evaporator exit superheat, outside of the time that the door is actually open, when the system can draw much warmer near-ambient-temperature air into the evaporator, is dampened by the thermal mass of product typically in a field-installed cabinet, which is simulated by the loads in the cabinet during the DOE test procedure. Hence, DOE expects that savings of TXVs as compared to optimized capillary tubes would be small, and DOE has not seen data showing that this impact would be significant.

In response to the comment from the CA IOUs regarding expansion valves for remote condensing equipment, although the CRE test procedure does give credit for an increase in measured evaporator temperature through the use of the AHRI 1200 EER table, similar to testing associated with self-contained equipment described above, the variations in expansion device inlet conditions and also of conditions affecting the evaporator exit refrigerant state are sufficiently limited that an EEV would save little energy.

c. Doors for Open Units

In response to the October 2023 NOPR, NEEA and NWPCC expressed concern that DOE's proposal misses savings opportunities for the open equipment classes. (NEEA and NWPCC, No. 89 at pp. 3–4) NEEA and NWPCC stated that DOE's LCC analysis shows open equipment classes consume three to eight times the energy of comparable closed transparent/solid door-type units. (*Id.* at p. 4) NEEA and NWPCC commented that for some open-equipment families (*e.g.,* VOP.RC.M and VOP.RC.L), DOE only considers occupancy sensors and night curtains and does not allow efficiency increases beyond these design options (*Id.*) NEEA and NWPCC commented also that it favors a standard for open-type equipment classes that has parity with closed-door counterparts rather than increasing the gap between the two equipment types. (*Id.*) NEEA and NWPCC stated that if DOE raised the standard, some manufacturers may add doors on their open units to decrease energy losses from the unit. (*Id.*)

DOE understands NEEA and NWPCC's comment to mean that if DOE amended the standard, manufacturers may add doors on their open units to decrease energy losses from the unit; however, DOE notes that based on equipment classes already established in the CFR, the addition of doors would change the equipment class from being considered as an open case to being considered a closed case. As DOE has previously stated in the October 2023 NOPR, there are different physical and functional attributes for open and closed cases, thus parity in standards is likely not possible due to the increased air infiltration and radiation loads on open units. See 88 FR 70196,70220. Therefore, in this final rule, DOE considered all the technology options that are generally known to be available in the engineering analysis for open cases.

B. Screening Analysis

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

(1) Technological feasibility. Technologies that are not incorporated in commercial equipment or in commercially viable, existing prototypes will not be considered further.

(2) Practicability to manufacture, install, and service. If it is determined that mass production of a technology in commercial equipment and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) Impacts on product utility. If a technology is determined to have a significant adverse impact on the utility of the equipment to subgroups of consumers, or result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time, it will not be considered further.

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

(5) Unique-pathway proprietary technologies. If a technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it will not be considered further, due to the potential for monopolistic concerns.

10 CFR 431.4; 10 CFR part 430, subpart C, appendix A, 6(c)(3) and 7(b).

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed in the following sections.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded (''screened out'') based on the screening criteria.

1. Screened-Out Technologies

In the October 2023 NOPR, DOE tentatively determined to screen out increased insulation thickness and vacuum-insulated panels (''VIPs'') for ''impacts on product utility'' and linear compressors and air-curtain design for ''practicability to manufacture, install, and service.'' 88 FR 70196, 70222–70224. In the August 2024 NODA, DOE additionally presented a revised analysis with microchannel condensers screened out for ''practicability to manufacture, install, and service'' and evaporator fan controls screened out for ''impacts on product utility.'' 89 FR 68788, 68793.

DOE received several comments on the screening analysis in response to the October 2023 NOPR and August 2024 NODA, as discussed in the following sections.

a. Increased Insulation Thickness and Other Technologies That Affect Internal or External Dimensions

In the October 2023 NOPR analysis, and the August 2024 NODA, DOE screened out increased insulation thickness. See 88 FR 70196, 70222–

70223. Also, DOE did not consider increased-size evaporators or condensers in its analysis. 88 FR 70196, 70220.

In response to the October 2023 NOPR, Hussmann, Hoshizaki, AHRI, and SCC agreed with DOE's decision to screen out increased insulation thickness as a design option. (Hussmann, No. 80 at p. 4; Hoshizaki, No. 76 at p. 2; AHRI, No. 81 at p. 7; SCC, No. 74 at p. 3)

In response to the October 2023 NOPR, Hoshizaki commented that increased insulation will decrease volume due to set box sizes for restaurants and institutions, and it stated that due to customer demand, a smaller volume could result in lost sales for units that changed to lower capacity. (Hoshizaki, No. 76 at p. 2)

In response to the October 2023 NOPR, NAMA commented that several design options shown in the October 2023 NOPR TSD may have an impact on the overall machine capacity and that any design option that requires more space inside the machine must reflect the reduction of overall capacity. (NAMA, No. 85 at p. 15) NAMA commented also that larger condensers or evaporators, more insulation, and changes to type of glass resulting in new structural components all affect the overall capacity. (*Id.*) NAMA stated that the external dimensions of CRE are limited by the height of the building structure in break rooms or built-in areas, while the width and length are limited by the footprint of the machine and integration with other machines (*i.e.,* snack machines) to which CRE are paired. (*Id.*)

In response to the October 2023 NOPR, AHRI, SCC, and NAMA commented that DOE's NOPR analysis reflected consideration of increased insulation thickness for baseline models analyzed in its analysis. (AHRI, No. 81 at p. 7; SCC, No. 74 at p. 3; NAMA, No. 85 at pp. 28–29) Specifically, AHRI commented that for a number of equipment classes, the baseline insulation thicknesses used by DOE in its 2023 NOPR analysis are thicker than the thicknesses associated with the efficiency levels selected as energy conservation standards for those same classes in the 2014 final rule analysis. (*Id.*) NAMA stated that DOE did not discuss the resultant change in utility or performance in the October 2023 NOPR TSD, highlighting that the best example of this is the design option to add ½ inch of insultation to each of the product classes, which would result in smaller capacity, longer times for consumers to keep the doors open, and more frequent restocking. (*Id.*) NAMA further commented that DOE consultants reported at the November 2023 Public Meeting that the baseline units had 1–1.5 inches of foam, but that the NOPR TSD indicates use of 2–2.5 inches insulation thickness used in the analysis. (NAMA, No. 85 at pp. 28–29)

DOE notes that, while the October 2023 NOPR analysis did screen out insulation thickness increase (see 88 FR 70196, 70222–70223), the comments from NAMA indicate that some clarification regarding insulation thicknesses used in the analysis is appropriate. Tables 5A.2.5–5A.2.8 in the October 2023 NOPR TSD show the baseline insulation thickness used in the analysis, which ranged from 2 inches to 2.5 inches depending on the equipment class. This was based on teardown data that DOE had at the time the October 2023 NOPR analysis was completed, and is thicker than the baseline insulation thickness of 1 inch to 1.5 inches used in the preliminary analysis. Additional teardown information collected after the October 2023 NOPR analysis was completed suggested the values used in the October 2023 NOPR analysis were too large for some equipment classes. Hence, for the NODA analysis, DOE updated the baseline insulation thicknesses to the following representative values: 1.5 inches for medium- and high-temperature equipment; 2.0 inches for low-temperature equipment; and 2.5 inches for ice-cream temperature equipment. These thicknesses were also used for the final rule analysis. *See* section IV.C.1.a.iii for more details.

Regarding the comment from NAMA that the baseline insulation thickness is 1 to 1.5 inches, NAMA may be referring to an exchange between True and DOE consultants at the November 2023 Public Meeting,[44] discussing the increased baseline insulation thickness increases stated by AHRI, SCC, and NAMA between the June 2022 Preliminary Analysis and the October 2023 NOPR. DOE's consultants responded in the November 2023 Public Meeting that the October 2023 NOPR baseline insulation thicknesses used in the NOPR analysis were representative of the baseline insulation thickness from teardown data available to DOE at the time of the October 2023 NOPR—as already noted above, these insulation thickness values were changed in the August 2024 NODA and final rule analyses based on additional teardown information and in consideration of stakeholder comments.

[44] *See* November 2023 Public Meeting Transcript, No. 64 at pp. 59–60.

As discussed in chapter 3 of the final rule TSD, increasing insulation thickness increases the thermal resistivity of the exterior of the unit, which in turn reduces the heat load that must be removed by the CRE's refrigeration system. Therefore, this technology option can reduce the energy use of CRE. However, consistent with comments from Hoshizaki and NAMA, because CRE is typically required to meet standard dimensions to fit into a fixed amount of space, the refrigerated volume of the unit may need to be decreased to accommodate increased insulation thickness, thus limiting the capacity of the unit. As a result, DOE has determined that, for certain configurations of CRE, increased insulation thickness meets the screening criterion of ''impacts on product utility.'' In this final rule, DOE has screened out increased insulation thickness as a design option for improving the energy efficiency of CRE.

DOE notes that, while increased insulation thickness has been screened out in this final rule, DOE may consider updating the representative baseline insulation thickness to reflect the current market in any future DOE actions or rulemakings.

In response to the comment from NAMA regarding consideration of larger condensers or evaporators as design options, DOE notes that these design options were not analyzed in the cost-efficiency results for the October 2023 NOPR or August 2024 NODA analysis, and is maintaining that approach in this final rule. Also, in response to the NAMA comment, design options associated with improvements to glass doors did not meet the screening criteria in the October 2023 NOPR or August 2024 NODA, and DOE maintains this approach for this final rule. DOE notes that some CRE currently available on the market incorporate the improved transparent door design options, which demonstrates the ability of CRE to use this technology. DOE discusses these design options in section IV.C.1 of this document and chapters 3 and 5 of the final rule TSD.

b. Vacuum-Insulated Panels

In the October 2023 NOPR, and the August 2024 NODA, DOE tentatively determined that vacuum-insulated panels meet the screening criterion of ''impacts on product utility'' and screened out vacuum-insulated panels as a design option for improving the energy efficiency of CRE. 88 FR 70196, 70223.

In response to the October 2023 NOPR, Hussmann, Hoshizaki, AHRI, and SCC agreed with DOE's decision to

screen out VIPs as a design option. (Hussmann, No. 80 at p. 4; Hoshizaki, No. 76 at p. 2; AHRI, No. 81 at p. 7; SCC, No. 74 at p. 3)

In response to the October 2023 NOPR, NAMA recommended that DOE remove VIPs from the rulemaking and from future rulemakings, due to the reasoning given in its response to the June 2022 Preliminary Analysis. (NAMA, No. 85 at p. 29)

In response to the October 2023 NOPR, Hoshizaki commented that VIPs are not a good alternative due to susceptibility of breakage and because the increased space needed to store VIPs for production preparation would necessitate much larger production facilities, resulting in larger capital expenditures. (Hoshizaki, No. 76 at p. 2)

As a confirmed by comments received in support of screening out VIPs, DOE is not aware of any implementations of VIPs—either in commercial equipment or in commercially viable, existing prototypes that could accommodate these structural requirements specific to CRE. As a result, DOE has determined that, at this time, vacuum-insulated panels implemented in CRE meet the screening criterion of ''technological feasibility.'' In this final rule, DOE has screened out vacuum-insulated panels as a design option for improving the energy efficiency of CRE.

In response to the comment from NAMA about future rulemakings, DOE notes that this screening analysis only applies to this final rule, and not to future actions or rulemakings. EPCA's 6-year lookback provision allows DOE to consider technological advances and new technologies in future actions or rulemakings. Therefore, DOE may reconsider VIPs when conducting the screening analysis in any future action or rulemaking.

c. Linear Compressors

In the October 2023 NOPR, DOE tentatively determined that linear compressors meet the screening criterion of ''practicability to manufacture, install, and service'' and screened out linear compressors as a design option for improving the energy efficiency of CRE. 88 FR 70196, 70223.

In response to the October 2023 NOPR, Hussmann, Hoshizaki, AHRI, and SCC agreed with DOE's decision to screen out linear compressors as a design option. (Hussmann, No. 80 at p. 4; Hoshizaki, No. 76 at p. 2; AHRI, No. 81 at p. 7; SCC, No. 74 at p. 3)

NAMA recommended that DOE remove linear compressors from the rulemaking and from future rulemakings, due to the reasoning given in its response to the June 2022 Preliminary Analysis. (NAMA, No. 85 at p. 29)

As a result of comments received in support of screening out linear compressors, DOE has determined that linear compressors meet the screening criterion of ''practicability to manufacture, install, and service.'' In this final rule, DOE has screened out linear compressors as a design option for improving the energy efficiency of CRE.

In response to the comment from NAMA about future rulemakings, DOE notes that this screening analysis only applies to this final rule, and not to future actions or rulemakings. EPCA's 6-year lookback provision allows DOE to consider technological advances and new technologies in future actions or rulemakings. Therefore, DOE may reconsider linear compressors when conducting the screening analysis in any future action or rulemaking.

d. Air-Curtain Design

In the October 2023 NOPR, DOE tentatively determined that air-curtain design meets the screening criterion of ''practicability to manufacture, install, and service'' and screened out air-curtain design as a design option for improving the energy efficiency of CRE. 88 FR 70196, 70224.

In response to the October 2023 NOPR, Hussmann, Hoshizaki, AHRI, and SCC agreed with DOE's decision to screen out air-curtain design as a design option. (Hussmann, No. 80 at p. 4; Hoshizaki, No. 76 at p. 2; AHRI, No. 81 at p. 7; SCC, No. 74 at p. 2)

As a result of comments received in support of screening out air-curtain design, DOE has determined that air-curtain design meet the screening criterion of ''practicability to manufacture, install, and service.'' In this final rule, DOE has screened out air-curtain design as a design option for improving the energy efficiency of CRE.

e. Permanent Magnet Synchronous AC Motors

In the October 2023 NOPR, DOE did not include permanent magnet synchronous motors (''PMS motors'') as a design option in its October 2023 NOPR engineering analysis. 88 FR 70196, 70221.

In response to the October 2023 NOPR, the CA IOUs recommended that DOE consider PMS motors as a design option for closed-door units. (CA IOUs, No. 84 at p. 6) The CA IOUs commented that PMS motors are 30 percent more efficient than electronically commutated motors and are considered the most efficient fan motor technology. (*Id.*) The CA IOUs commented also that while some manufacturers report avoiding the use of PMS motors in their equipment due to noise concerns, noise should not be an issue for closed-door refrigeration units and there should be no significant barrier to adoption. (*Id.*) The CA IOUs stated that although DOE does not recommend PMS motors as a design option because specific commercialized PMS designs of the appropriate size and airflow were not identifiable, retrofit applications have used PMS motors in CRE connected to a remote condensing unit, vertical, transparent and open cases because of their appropriate size and airflow. (*Id.*)

With respect to the comment from the CA IOUs, DOE has observed that PMS motors are available for retrofit applications from one manufacturer,[45] but has not observed them in any new CRE. While PMS motors may be available for certain retrofit applications, DOE has not observed specific commercialized designs with the appropriate size and rated airflow for the range of equipment analyzed in support of this final rule. Based on these observations, along with discussions with manufacturers, DOE has determined that PMS motors meet the screening criterion of ''practicability to manufacture, install, and service'' to be excluded in the engineering analysis. Therefore, in this final rule, DOE has screened out PMS motors as a design option for improving the energy efficiency of CRE.

f. Evaporator Fan Control

In the October 2023 NOPR, DOE assumed that evaporator fans of baseline equipment runs continuously for 24 hours a day (except during electric defrost). DOE considered in its analysis a design option, ''evaporator fan control,'' in which evaporator fans cycle off for a portion of the compressor off cycles. DOE assumed for its analysis that evaporator fan control allows the fan to run during compressor off cycles 20-percent longer than the compressor on cycles, excluding the time period when the unit is in defrost mode. See chapter 5 of the October 2023 NOPR TSD. Based on testing of directly analyzed units, DOE observed that evaporator fan control is already implemented in certain models available on the market. DOE determined that 20-percent additional run time compared to the compressor on cycles is representative based on observation of its directly tested units that incorporate evaporator fan control. Based on manufacturer feedback on the June 2022 Preliminary Analysis, in the

[45] *See qmpower.com/products/.*

October 2023 NOPR, DOE tentatively determined that evaporator fan control would only be suitable for closed, self-contained equipment—DOE limited the consideration of this design option in its October 2023 NOPR analysis to this equipment category.[46]

In response to the October 2023 NOPR, Hillphoenix, ITW, NAMA, NAFEM, and Ravnitzky commented with concern regarding the food safety implications of incorporating evaporator fan controls in the proposed standards. (Hillphoenix, No. 77 at p. 3; ITW, No. 82 at p. 6; NAMA, No. 85 at p. 16; NAFEM, No. 83 at pp. 10–11; Ravnitzky, No. 57 at p. 3)

In the November 2023 Public Meeting, Continental commented that it concluded that evaporator fan control resulted in freeze-ups on coils in the field, and it stopped using it for that reason. (November 2023 Public Meeting Transcript, No. 64 at pp. 68–69)

ITW commented that DOE should revise its October 2023 NOPR engineering spreadsheet assumptions to better reflect the current state of the industry in its application of fan control strategies. (ITW, No. 82 at p. 2) ITW stated that most manufacturers are already running fan duty cycles lower than 100 percent, so it is inaccurate to consider 100-percent fan duty cycle as the current industry baseline. (*Id.*) ITW also commented that to allow for proper off-cycle defrost and cabinet thermal performance, DOE should increase the duty cycle runtime multiplier to be a function of both compressor runtime and off-cycle defrost time, while allowing for additional run time for cabinet thermal destratification in the baseline calculation. (*Id.*)

ITW further commented that it disagrees with the fan control assumptions in the October 2023 NOPR engineering spreadsheet calculations, where the energy savings calculation for the ''fan control strategy'' is based on the difference between EFC1 (no fan control) and EFC2 (fan control), where the baseline EFC1 strategy assumes current products have 100-percent fan duty cycle and the improved EFC2 strategy assumes the fan duty cycle is equal to 120 percent of the compressor duty cycle. (*Id.* at p. 3) ITW stated that all ITW products have already adopted some form of fan control strategy to meet DOE's 2017 energy standards and that, based on a recent NAFEM survey, 87.5 percent of the CRE manufacturers surveyed are already utilizing some form of fan control strategy. (*Id.*)

Furthermore, ITW commented that the proposed EFC2 strategy does not properly account for the need to run the evaporator fan during off-cycle defrost as well as outside of compressor and defrost cycles in order to provide adequate cooling and defrost performance and proper destratification of the cabinet air temperatures. (*Id.*) ITW elaborated that outside the compressor run period and off cycle defrost period is the only time zone that the fan control strategy can be played. (*Id.* at pp. 8–9) ITW stated that it conducted a study showing that 50 percent on, 50 percent off for an evaporator fan during a compressor off period is a good strategy to save energy while still maintaining a relatively uniform air and product temperature. (*Id.*) ITW stated that the evaporator fan run state during the compressor off period is irrelevant to compressor run time, and it will be the percentage of compressor off time. (*Id.*) ITW requested that for the EFC2 strategy, the fan duty cycle in the CRE engineering spreadsheet be calculated considering the formula: RT + OCDT + 50% × (24 − CRT − OCDT), where RT = Compressor Runtime OCDT = Off-Cycle Defrost Time. (*Id.* at pp. 3, 8) ITW provided an example for VCS.M case, claiming that DOE's estimated evaporator fan run time is 7 hours less than the real application. (*Id.* at p. 9)

The CA IOUs recommended that DOE consider evaporator fan control as a design option for all closed, self-contained refrigeration equipment classes and not just for solid-door refrigeration units. (CA IOUs, No. 84 at pp. 4–5) The CA IOUs commented that variable-speed evaporator fan controls turn off the fans when the refrigeration door opens, reducing hot- air infiltration and the equipment's energy use, and such controls also save fan energy when the compressor is off. (*Id.* at p. 4) The CA IOUs added that although evaporator frost buildup and temperature stratification may occur, fan ''stir'' cycles can mitigate these issues. (*Id.*)

In response to these comments, DOE reviewed the NSF 7 standard mentioned by commenters and found that section 6.10, ''Performance—storage refrigerators and refrigerated food transport cabinets,'' requires CRE to maintain an air temperature at or below 40 °F for all compartments; section 6.11, ''Performance—storage freezers,'' requires CRE to maintain an air temperature at or below 0 °F for all compartments; section 9.14, [Display Refrigerator] ''Performance,'' requires CRE to maintain an air temperature at or below 41 °F for display refrigerators intended to hold potentially hazardous foods; section 9.15, [Display Refrigerator] ''Performance—temperature recovery test,'' requires CRE with automatic lockout to restore the air temperature in its food storage compartment to 41 °F or below after having its door open for 15 minutes; section 9.16, [Display Refrigerator] ''Performance—automatic lockout,'' requires CRE with automatic lockout to activate the door lock if the air temperature in the food storage compartment is greater than 41 °F for more than 30 minutes.

Evaporator fan control, as analyzed in the October 2023 NOPR, could reduce air distribution and temperature uniformity in the refrigerated compartment, potentially leading to temperatures outside of the NSF 7 tolerances. As mentioned in the comment from Continental, temperatures outside of the NSF 7 tolerances could also occur if the evaporator coil freezes up due to a lack of consistent airflow.

In response to the comment from ITW stating that most manufacturers currently incorporate evaporator fan control, DOE notes that it is unclear if the models referenced by ITW that meet DOE's 2017 standards are units that have energy use at the current standard level, or at an energy use level more efficient than the current standards.

Further, DOE received feedback during manufacturer interviews that in CRE connected to remote condensing units, evaporator fans are always on, due to constant refrigerant flow through the system. Additionally, open CRE have evaporator fans on constantly to maintain the air curtain.

Although some self-contained, closed CRE may be able to use evaporator fan controls, there is insufficient information currently available to conclude that a significant number of CRE can use this approach and also comply with NSF 7 requirements. Therefore, in the August 2024 NODA, DOE removed evaporator fan controls as a design option. NAFEM, Continental, Hussmann, AHRI, Delfield, and Hillphoenix all commented in support of this decision. (NAFEM, No. 101 at pp. 2–3; Continental, No. 107 at p. 2; Hussmann, No. 108 at p. 2; AHRI, No. 104 at p. 8; Delfield, No. 99 at p.2; Hillphoenix, No. 110 at p. 4)

The CA IOUs recommended that DOE reevaluate evaporator fan control as a design option for six CRE equipment classes: VCS.SC.H, VCS.SC.M, VCS.SC.L, VCS.SC.I, SOC.SC.M, and HCS.SC.M. (CA IOUs, No. 113 at p. 3) The CA IOUs commented that they subjected four commercially available

[46] See section 5.5.6 of the October 2023 NOPR TSD, located at *www.regulations.gov/document/EERE-2017-BT-STD-0007-0051.*

units with evaporator fan controls from two manufacturers (3 VCS.SC.M, 1 VCS.SC.L) to a modified, more stringent NSF 7 test. *Id.* The CA IOUS added that they based the modified NSF 7 test on the formal NSF 7 test for display coolers, with modifications to unit loading and ambient dry bulb temperature. *Id.* The CA IOUs commented that, for cooler to pass the modified NSF 7 test, the average temperature of the warmest internal thermocouple must not exceed 41 °F, and no individual temperature readings shall exceed 43 °F. *Id.* For freezers, the integrated average temperature of all internal thermocouples must fall within 0 ± 2 °F. *Id.* The CA IOUs commented that all four units met the internal temperature criteria despite these stringent test conditions. *Id.* The CA IOUs commented that, therefore, testing conducted by the CA IOUs on VCS.SC.M and VCS.SC.L CRE units indicates that units with evaporator fan controls can maintain internal compartment temperatures consistent with NSF 7. *Id.* The CA IOUs recommended that DOE gather more evidence related to these concerns to reevaluate the inclusion of evaporator fan controls in its engineering analysis, instead of simply removing a viable energy-saving technology from the analysis due to 'uncertainty.' *Id.*

ASAP et al. encouraged DOE to be less conservative in this rulemaking. (ASAP *et al.,* No. 106 at p. 2) ASAP *et al.* stated that DOE screened out evaporator fan controls due to comments concerned about food safety, however DOE discussed in the October 2023 NOPR that the Department tested CRE units that incorporated evaporator fan controls, and the Department acknowledges in the NODA that NSF 7 food safety requirements do not preclude the use of evaporator fan controls, thus ASAP et al. encouraged DOE to include the technology. (*Id.*)

DOE recognizes that some self-contained, closed, CRE are able to use evaporator fan controls and comply with NSF 7 requirements, however, there is not sufficient information currently available to conclude that a significant number of CRE can use evaporator fan controls and comply with NSF 7.

Consistent with the results presented in the August 2024 NODA, DOE has determined that evaporator fan controls meet the screening criterion of ''safety of technologies'' for self-contained, closed CRE and ''impacts on product utility'' for CRE connected to remote condensing units and open CRE for this final rule. In this final rule, consistent with the results presented in the August 2024 NODA, DOE's engineering analysis has the evaporator fan running constantly, except during electric defrost, in the baseline and all efficiency levels. This approach improves the ability of CRE to achieve better temperature uniformity, which can assist in ensuring food safe temperatures inside the unit.

g. Microchannel Condensers

In the October 2023 NOPR, DOE considered microchannel condensers as a design option for self-contained CRE, having observed the use of microchannel condensers in other commercial refrigeration equipment such as automatic commercial ice makers (''ACIMs''), including ACIMs that use R–290. 88 FR 70196, 70222.

In response to the October 2023 NOPR, SCC, NAFEM, and NAMA mentioned that microchannel condensers have clogging issues in the field. (SCC, No. 74 at p. 2; NAFEM, No. 83 at p. 7; NAMA, No. 85 at p. 12) Hoshizaki, NAMA, NAFEM, and Hussmann commented that microchannel condensers need more frequent cleaning than tube and fin heat exchangers. (Hoshizaki, No. 76 at p. 5; NAMA, No. 85 at p. 12; Hussmann, No. 80 at p. 12; NAFEM, No. 83 at pp. 6–7) SCC commented that clogging leads to increased energy consumption, while NAFEM and Hussmann stated that microchannels have little to no energy savings compared to tube and fin heat exchangers. (SCC, No. 74 at p. 2; NAFEM, No. 83 at p. 5; Hussmann, No. 80 at p. 5) AHRI added that microchannel condensers cannot always be substituted for fin and tube heat exchangers. (AHRI, No. 81 at p. 12) AHRI also stated the following microchannel condenser considerations: supplier tooling costs for custom configurations; existing and potential tariffs on components; significant lab testing to validate temperature and energy performance; field testing for reliability; product line changeovers; consideration for refrigerant charge; and air flow analysis to determine the impact on the air curtain. (*Id.*) Hoshizaki commented that microchannel condensers have shorter lifetimes than current condensers, and NAMA added that when not maintained, microchannel condensers can cause premature failure of the compressor. (Hoshizaki, No. 76 at p. 5; NAMA, No. 85 at p. 12) NAMA and NAFEM commented that microchannel condensers can have leaks, which is not acceptable with flammable refrigerants, and are screened out in the household refrigeration rulemaking. (NAMA, No. 85 at pp. 12, 34; NAFEM, No. 83 at pp. 6–7) NAMA further stated that microchannels show greater likelihood of pinhole leaks, and thus their use with flammable refrigerants could constitute a safety hazard. (NAMA, No. 85 at pp. 25, 34) NAMA added that microchannel condensers are not yet available in configurations for R–290 refrigerants, and NAMA has no information to suggest that they will be in the years ahead. (*Id.* at p. 25)

Hoshizaki commented that microchannel condensers would need time for engineering personnel to determine the best circuit for the refrigeration system and best way to join the piping. (Hoshizaki, No. 76 at p. 4) Hoshizaki stated that there will be a learning curve adding more time compared to that of current condensers to make sure the system is made in an optimal way and require value lost on increase of labor time for installation and testing. (*Id.* at pp. 4–5)

NAMA commented that it identified an inconsistency in DOE's acceptance of microchannel condensers. (NAMA, No. 85 at pp. 12–13) NAMA and NAFEM pointed out that in the 2021 household refrigerator rulemaking, DOE decided not to pursue a rulemaking design option based on microchannel condensers.[47] (*Id.* at p. 13; NAFEM, No. 83 at pp. 6–7) NAMA requested clarification on whether microchannels are unacceptable or whether the TSD for household refrigeration is inaccurate. (NAMA, No. 85 at p. 13) NAMA recommended that DOE be consistent and screen out microchannels in CRE because the 2021 DOE household refrigeration appliances energy conservation standards rulemaking on household refrigeration appliances screened out microchannel condensers. (*Id.* at p. 34)

NAMA stated that microchannels require more frequent servicing and cleaning and added that DOE underestimated the extra time and cost. (*Id.* at p. 33) NAMA estimated the cost for fittings, machinery for insertion, other capital improvements, and additional servicing to be well over $100. (*Id.*)

In response to the comments regarding microchannel condensers, DOE has observed microchannel condensers in other commercial refrigeration equipment such as ACIMs, including ACIMs that use R–290. However, DOE is not currently aware of microchannel condensers in use for CRE and did not observe microchannel condensers in any of the equipment in the teardown analysis. Even though

[47] *See* section 5.5.2 of the Residential Refrigerator NOPR TSD at *www.regulations.gov/document/EERE-2017-BT-STD-0003-0045.*

DOE tentatively determined in the October 2023 NOPR that microchannel condensers would be technically feasible for use in CRE, feedback from commenters in response to the October 2023 NOPR suggests that there is current uncertainty as to the practicability to manufacturer, install, or service this technology on the scale necessary to serve the CRE market at the time of the effective date of any new or amended standards. Recognizing this uncertainty, DOE tentatively screened out microchannel condensers as a design option in the August 2024 NODA. 89 FR 68788, 68793.

In response to the August 2024 NODA, ITW supported DOE's determination to screen-out microchannel condensers from consideration as a design option. (ITW, No. 111 at p. 1) Hillphoenix, NAFEM, Delfield, and Continental also commented in support of DOE's decision to screen-out microchannel condensers. (Hillphoenix, No. 110 at p. 4; NAFEM, No. 101 at pp. 2–3; ; Delfield, No. 99 at p.2; Continental, No. 107 at p. 2)

Based on the uncertainty associated with microchannel condensers, and consistent with the August 2024 NODA, DOE screened-out microchannel condensers as a design option in this final rule. See chapter 4 of the final rule TSD for more information.

2. Remaining Technologies

Through a review of each technology, DOE concludes that all of the other technologies listed in table IV.4 met all five screening criteria to be examined further as design options in DOE's final rule analysis. In summary, DOE did not screen out the following technology options:

Table IV.4 Remaining Technology Options for CRE

Insulation	**Condenser****
Improved resistivity of insulation (insulation type)	Increased surface area**
Lighting	Tube-and-fin enhancements**
Higher-efficiency lighting	**Fans and fan motors**
Occupancy Sensors	Evaporator fan motors
Improved transparent doors*	Evaporator fan blades
Low-emissivity coatings*	Condenser fan motors**
Inert gas fill*	Condenser fan blades**
Vacuum-insulated glass*	Condenser fan controls**
Additional panes*	**Compressor****
Anti-sweat heater controls*	Improved compressor efficiency**
Anti-fog films*	Alternative refrigerants**
Frame design*	Variable-speed compressors**
Evaporator	**Other technologies**
Increased surface area	Defrost systems
Improved evaporator coil design	Expansion valve improvements
Low-pressure differential evaporator	Night curtains***
	Liquid suction heat exchanger**

* Only applies to equipment classes with doors

** Only applies to self-contained equipment classes

*** Only applies to equipment classes without doors (open equipment classes)

a. Other Technologies Not Screened-Out

In response to the August 2024 NODA, ITW commented that they manufacture chef base and griddle stand models with both refrigerator (CB.SC.M) and freezer (CB.SC.L) storage compartment temperatures, and that these models have widths ranging from 36″ to 139″, and model volumes ranging from 4.5 cu-ft to 30.5 cu-ft. (ITW, No. 111 at p. 2) ITW commented that refrigerator models having widths great than (CB.SC.M > 84″) and freezer models having widths great than (CB.SC.L > 60″) use two or more evaporator coils spread along the width of the cabinet interior. (*Id.*) ITW commented that they currently do not understand the implications associated with the application of variable speed reciprocating compressors in self-contained refrigeration systems with multiple evaporator circuits. (*Id.*) ITW urged DOE to provide additional information to stakeholders, and suggested that DOE screen-out EL3—''R–290 Variable Speed Reciprocating Compressor″ from the list of available design options for both CB.SC.M and CB.SC.L CRE in their energy analysis. (*Id*).

In response to the ITW comment, DOE notes that it had considered variable-speed compressors in its preliminary analysis (see pages 5–51 and 5–52 of the Preliminary Analysis TSD) and for its October 2023 NOPR analysis for chef bases (see pages 5–54 and 5–55 of the October 2023 NOPR TSD). Although DOE received many comments regarding setting of standards for chef bases and regarding use of variable-speed compressors, DOE received no comments specifically about use of variable-speed compressors in this equipment class, nor use of variable-speed compressors in systems with multiple evaporator circuits. DOE also did not receive input regarding this topic in manufacturer interviews. DOE notes that variable-capacity compressor systems serving multiple evaporator circuits are quite common, *e.g.,* in supermarkets, where a single compressor rack can serve many individual evaporators in cabinets distributed throughout the store. DOE concludes that, while additional factors may need to be considered in the design and development for such systems,

there is no available information that would be the basis of screening the technology for the self-contained chef base equipment classes. Hence, DOE has considered variable speed compressors as a design option for these classes.

In response to the August 2024 NODA, NAFEM commented that DOE only removed some of the technologies NAFEM had suggested screening out in its comments in response to the October 2023 NOPR, and DOE did not provide a clear reason for why some technologies were removed and not others. (NAFEM, No. 101 at pp. 2–3)

NAFEM commented that it did not agree with DOEs decision to keep insulation, lighting, improved transparent doors, compressors, evaporators, condensers, fans, and other technologies including defrost systems, expansion valve, night curtains, and liquid suction heat exchangers in the analysis, as these are all already in-use technologies. (*Id.* at p.3) Additionally, NAFEM stated that occupancy-based lighting, microchannel condensers, and night curtains suffer from technical shortcomings, as NAFEM previously identified in their comments. (*Id.*)

DOE notes that in short, NAFEM commented that all identified technology options remaining after the screening analysis should be screened out. DOE notes that some of the technologies mentioned by NAFEM (*i.e.,* lighting, evaporators, and condensers) are analyzed in the baseline for all applicable equipment classes and are not analyzed as design options to improve efficiency (See appendix 5A of the October 2023 NOPR TSD for more details). In addition, some technologies were not directly analyzed in the October 2023 NOPR or August 2024 NODA, and continue to not be analyzed in this final rule (*i.e.,* defrost systems, expansion valves, and liquid suction heat exchangers) (See section 5.5.8 Design Options Not Directly Analyzed in the October 2023 NOPR TSD). While these technologies did not, and continue to not meet the screening criteria, DOE has not directly analyzed these design options as discussed further in chapter 5 of the final rule TSD. Finally, DOE did analyze design options in the October 2023 NOPR and August 2024 NODA for improved transparent doors, compressors, fans, occupancy sensors, and night curtains for applicable equipment classes, but notes that there are instances where DOE analyzed these technologies in the baseline, and did not consider those technologies as design options to improve efficiency (*i.e.,* baseline EC condenser or evaporator fan motor for certain equipment classes and R–290 baseline at the current standard for certain equipment classes). For a full list of technology options analyzed at the baseline, see appendix 5A of the final rule TSD. DOE evaluated technology options to be implemented at and beyond baseline on an equipment class basis based on testing, component/equipment teardowns, manufacturer interviews, public comments, and review of online sources (*e.g.,* spec sheets), and therefore disagrees with NAFEM that all technologies should be screened out. See section IV.C.1 for further discussion on this topic.

DOE determined that these technology options are technologically feasible because they are being used or have previously been used in commercially available equipment or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service; do not result in adverse impacts on consumer utility, product availability, health, or safety; and do not utilize unique-pathway proprietary technologies). For additional details, see chapter 4 of the final rule TSD.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of the equipment. There are two elements to consider in the engineering analysis: the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis''), and the determination of equipment cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency equipment, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each equipment class, DOE estimates the baseline cost, as well as the incremental cost for the equipment at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing equipment (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using the design option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual equipment on the market) may be extended using the design option approach to interpolate to define ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the ''max-tech'' level (particularly in cases where the ''max-tech'' level exceeds the maximum efficiency level currently available on the market).

In the October 2023 NOPR, DOE relied on a design-option approach, supported with the testing and reverse engineering of directly analyzed CRE. 88 FR 70196, 70224. Consistent with the precedent set by March 2014 Final Rule analysis (see chapter 5 of the March 2014 Final Rule TSD),[48] DOE estimated the performance of design option combinations using an engineering analysis spreadsheet model. *Id.* at 88 FR 70225. This model estimates the daily energy consumption of CRE in kWh/day at various performance levels based on design details. *Id.* DOE generally relied on test data, CCD information, feedback from manufacturer interviews and public comments, publicly available component information, and reverse engineering to support and calibrate the engineering analysis spreadsheet model and the values of inputs to the models, such as compressor performance information, insulation thickness and thermal resistance, air infiltration, etc. *Id.* The model calculates energy consumption at each efficiency level separately for each analysis configuration. *Id.*

In the March 2014 Final Rule analysis, DOE selected 25 high shipment volume equipment classes, referred to as ''primary'' classes, selecting a representative capacity (defined by refrigerated volume or TDA, depending on the class), to analyze using the engineering analysis. DOE has used the term ''directly analyze'' to refer to use of the engineering spreadsheet to calculate energy use for the representative unit of a given primary

[48] See *www.regulations.gov/document/EERE-2010-BT-STD-0003-0102.*

equipment class. Analyses or energy use levels of so-called ''secondary'' equipment classes were based on the analysis results determined for the primary equipment classes (see chapter 5 of the March 2014 Final Rule TSD).[49] In the October 2023 NOPR analysis, DOE followed a similar approach of directly analyzing 28 primary equipment classes. *Id.* DOE directly analyzed the same primary equipment classes as the March 2014 Final Rule, with the following changes: the PD.SC.M equipment class was not included, and DOE directly analyzed 4 new equipment classes, including VCT.SC.H, VCS.SC.H, chef base or griddle stand self-contained medium temperature (''CB.SC.M''), and chef base or griddle stand self-contained low temperature (''CB.SC.L''). *Id.*

In response to the October 2023 NOPR, ASAP *et al.* supported DOE's approach for the engineering analysis, which was supported by testing, physical and catalog teardowns, and manufacturer feedback and estimated both the energy use and the manufacturer production cost (''MPC'') from use of additional design options in CRE that increase efficiency. (ASAP *et al.,* No. 79 at p. 2) ASAP *et al.* commented that DOE's design option approach represents a robust method for estimating the incremental cost and expected efficiency improvements associated with specific design options for CRE and stated that this approach is consistent with DOE's analysis for other rulemakings. (*Id.*)

In this final rule analysis, DOE has followed the same methodology as the October 2023 NOPR, except for the updates outlined in the following sections. In this final rule, consistent with the analysis in the August 2024 NODA, DOE analyzed a different representative capacity for the SOC.SC.M equipment class that assumes the use of R–290. DOE also made changes to the baseline analysis, including updating the R-value and thickness of insulation, updating the compressor performance assumptions, updating certain baseline components, and updating baseline design specifications for some equipment classes. Additionally in this final rule, DOE removed some design options (as discussed in section IV.B of this document) and updated the analysis approach or key performance characteristics of some design options (as discussed in section IV.C of this document).

[49] See *www.regulations.gov/document/EERE-2010-BT-STD-0003-0102.*

Also consistent with the August 2024 NODA, DOE made updates to the multiplier approach, as discussed in section IV.C.1.c of this document.

a. Baseline Energy Use

For each equipment class, DOE generally selects a baseline model as a reference point for each class, and measures anticipated changes resulting from potential energy conservation standards against the baseline model. The baseline model in each product/equipment class represents the characteristics of a product/equipment typical of that class (*e.g.,* capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market.

i. Representative Unit Capacity

In performing the engineering analysis for CRE, DOE selected representative units for each primary equipment class to serve as analysis points in the development of cost-efficiency curves. In the October 2023 NOPR, DOE directly analyzed 28 primary equipment classes, at a single representative capacity for each CRE equipment class. 88 FR 70196, 70225.

Few of the NOPR comments explicitly addressed the DOE approach of conducting analysis at a single representative capacity for each class. Some comments regarding selection of the slope or intercept of the energy conservation standard line as a function of volume or TDA are related to the single-capacity approach—this is because determination of appropriate slope could potentially be evaluated on the basis of conducting analysis for two representative capacities. Such comments are discussed in section IV.C.1.d of this document. For some equipment classes, the topic of representative capacity is also affected by refrigerant transition—this is discussed in more detail in section IV.C.1.a.ii of this document. Finally, NAMA submitted a comment regarding VCT.SC.M models with refrigerated volume less than 30 cu.ft. (NAMA, No. 85 at pp. 5–6). This comment addresses both the potential for establishing a separate class for such models, as well as the representativeness of DOE's selected representative capacity. Hence, this comment is addressed in section IV.A.1.b of this document and is not discussed here.

In response to the August 2024 NODA, ITW commented that after reviewing table 1.2 in the NODA support document, it would appear DOE's analysis focused on models with interior volumes <10 cu-ft for refrigerators and <12 cu-ft for freezers, and that the engineering spreadsheet used an example model of 9.5 cu-ft. (ITW, No. 111 at p. 2) ITW commented expressed concern for the proposed standards encompassing models with volumes greater than 12 cu-ft employing technology at an energy efficiency level of EL3. *Id.*

In response to this comment from ITW, DOE notes that it not only considered the test data presented in table 1.2 of the NODA support document, but also reviewed information publicly available online, as well as information gathered through manufacturer interviews and comments in response to the October 2023 NOPR and August 2024 NODA. While DOE acknowledges there are chef bases or griddle stands larger than the units DOE directly tested, based on the additional chef base or griddle stand data DOE received and reviewed for larger volumes, DOE determined that this data was consistent with the analysis for DOE's representative unit volumes.

No other comments were submitted related to use of a single representative capacity for each class in the analysis.

ii. Addressing Refrigerant Transition

In the October 2023 NOPR analysis, DOE addressed the ongoing refrigerant transition mandated by the AIM Act and EPA regulations. 70196, 70226–70228. Specifically, DOE noted that, pursuant to the AIM Act, EPA proposed in the December 2022 EPA NOPR that all commercial refrigeration equipment would have to transition to refrigerants with GWP less than 150 or less than 300, depending on equipment characteristics (*e.g.,* self-contained vs. operating with a remote condenser), by January 1, 2025. *Id.* After publication of the October 2023 NOPR, EPA published a final rule, ''Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under the American Innovation and Manufacturing Act of 2020'' (''October 2023 EPA Final Rule''), which extended the compliance date for equipment operating with a remote condenser to January 1, 2026, for remote-condensing equipment used in supermarkets to January 1, 2027, for refrigerated food processing and dispensing equipment except for equipment within the scope of UL 621 to January 1, 2027, and for refrigerated food processing and dispensing equipment within the scope of UL 621 to January 1, 2028. 88 FR 73098, 73209 (October 24, 2023). See table IV.5 for a list of all GWP limits and compliance dates applicable to CRE that

were finalized in the October 2023 EPA Final Rule.

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Table IV.5 October 2023 EPA Final Rule Summary for CRE October 2023 EPA Final Rule Summary for CRE

Sectors and Subsectors	GWP Limit or Prohibited Substance(s)	Compliance Date
Retail food refrigeration – stand-alone units	150	January 1, 2025
Retail food refrigeration – refrigerated food processing and dispensing equipment – self-contained equipment with charge sizes ≤ 500 grams outside the scope of UL 621	150	January 1, 2027
Retail food refrigeration – refrigerated food processing and dispensing equipment – self-contained equipment with charge sizes > 500 grams outside the scope of UL 621 and remote condensing equipment	R–402A, R–402B, R–404A, R–407A, R–407B, R– 407C, R–407F, R–407H, R–408A, R– 410A, R–410B, R–411A, R–411B, R– 417A, R–417C, R–420A, R–421A, R– 421B, R–422A, R–422B, R–422C, R– 422D, R–424A, R–426A, R–427A, R– 428A, R–434A, R–437A, R–438A, R– 507A, HFC–134a, HFC–227ea, R–125/ 290/134a/600a (55/1/42.5/1.5), RB–276, RS–24 (2002 formulation), RS–44 (2003 formulation), GHG–X5, or Freeze 12	January 1, 2027
Retail food refrigeration – refrigerated food processing and dispensing equipment – self-contained equipment within the scope of UL 621		January 1, 2028
Retail food refrigeration – supermarket systems with refrigerant charge capacities of 200 pounds or greater	150	January 1, 2027
Retail food refrigeration – supermarket systems with refrigeration charge capacities less than 200 pounds charge	300	January 1, 2027
Retail food refrigeration – supermarket systems, high temperature side of cascade system	300	January 1, 2027
Retail food refrigeration – remote condensing units with refrigerant charge capacities of 200 pounds or greater	150	January 1, 2026
Retail food refrigeration – remote condensing units with refrigerant charge capacities less than 200 pounds	300	January 1, 2026
Retail food refrigeration – remote condensing units, high temperature side of cascade systems	300	January 1, 2026

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As discussed in the October 2023 NOPR, DOE assumed that manufacturers would convert self-contained CRE models to R–290. 88 FR 70196, 70227–70228. The use of R–290 is generally expected to provide higher efficiency performance at the baseline level (compared to current refrigerants), such that the baseline efficiency levels defined in the October 2023 NOPR for each self-contained class generally reflected a lesser energy use than the currently applicable DOE standards for CRE. *Id.* In the October 2023 NOPR, DOE's analysis considered that these efficiency improvements, equipment costs, and manufacturer investments required to comply with the December 2022 EPA NOPR would be in effect prior to the time of compliance for the amended CRE standards for all equipment classes and sizes as proposed in the October 2023 NOPR. *Id.* Therefore, in the October 2023 NOPR, DOE noted that the October 2023 NOPR analysis did not consider benefits and costs resulting from the December 2022 EPA NOPR. *Id.* DOE clarifies that DOE has not double counted any energy savings from the October 2023 EPA Final Rule in the October 2023 NOPR, in the August 2024 NODA, or in this final rule.

In the October 2023 NOPR, DOE requested comment on its proposal to use baseline levels for CRE equipment based upon the anticipated design changes that will be made by manufacturers in response to the December 2022 EPA NOPR. *Id.*

DOE received numerous comments indicating that R–290 may not be suitable for use in large-capacity self-contained equipment—these comments are addressed in the section below discussing large-capacity self-contained equipment using A2L refrigerant. DOE also received comments addressing analysis for smaller self-contained equipment that do not have an issue using R–290—these are addressed in the following section for non-large self-contained equipment using R–290. Additional more general comments regarding the refrigerant transition are discussed in the following paragraphs.

AHRI commented that the new refrigerants must conform to safety standards now being updated and revised, such as ASHRAE 15 and UL 60335–2–89, and these refrigerants are not universally compatible with all end uses covered in EPA's proposed Significant New Alternatives Policy (''SNAP'') approvals, requiring further refinement and other regulatory actions to clear the path forward. (AHRI, No. 81 at p. 2) AHRI cited as an example UL 60335–2–89 Second Edition (2021), which has been proposed for most end uses of A2Ls and a replacement for UL 471. (*Id.*)

AHRI commented that some product types have not switched to R–290, especially large CRE products that require larger charges of R–290, exceeding 150g. (AHRI, No. 81 at p. 8) AHRI commented that technology is just becoming available for larger units as manufacturers are working on preliminary designs to meet the proposed SNAP 26 rule and UL 60335–2–89; AHRI added that until these go into effect, larger charge quantities of R–290 cannot be used. (Id.)

Hussmann also pointed out that even though UL 60335–2–89 ed. 2 allows an increased 494 g R–290 charge size, this is not yet approved by SNAP. (Hussmann, No. 80 at p. 5)

In response to the October 2023 NOPR, SCC and AHRI commented that EPA has not published the SNAP Program Rule 26, which approves larger charges for R–290 products and that, currently, the charge limit for R–290 products is 150 grams, which limits the size of these products. (SCC, No. 74 at p. 2; AHRI, No. 81 at p. 5)

Hussmann stated that, because SNAP Rule 26 is still in the proposal stage, Hussmann has been unable to release equipment that uses higher-charge R–290 refrigerant or new A2L refrigerants and, therefore, how these refrigerants impact energy consumption is not yet known. (Hussmann, No. 80 at p. 2)

Hussmann and AHRI commented that DOE should refrain from new rulemakings until SNAP 26 and building codes are updated, and the transition to low-GWP refrigerants is completed, for a better understanding of baseline energy use. (Hussmann, No. 80 at pp. 2–3; AHRI, No. 81 at p. 5) AHRI stated that two key factors in lowering GWP and developing new systems—increased R–290 charge limits and SNAP approval of A2L—are not yet finalized by EPA and these technologies are representative of products retailers will use in 2027. (*Id.*) AHRI commented that, for self-contained products, these options will reduce the number of condensing units per display case (larger model display cases). (*Id.*)

In response, DOE notes that many of the ongoing regulatory and standards processes that were not finalized by the time of publication of the October 2023 NOPR have in the interim been finalized. Most notably, EPA finalized the October 2023 EPA Final Rule and the SNAP 26 Final Rule, which harmonizes with UL Standard 60335–2–89, Edition 2 and ASHRAE 15. 89 FR 50410 (June 13, 2024). Also relevant for the full capacity range of self-contained CRE, SNAP 26 increased the allowable charge of R–290 from 150 grams in self-contained CRE to 304 grams for closed equipment and 494 grams for open equipment and allows the use of certain A2L refrigerants, such as R–454C and R–455A.

FMI and NACS commented that DOE's assumption that the market will have transitioned to the October 2023 EPA Final Rule in its baseline is overly speculative and that there are challenges related to technical feasibility, availability of installers and service technicians, local codes, and more that will make it impossible for industry to comply with AIM Act regulations within the allotted compliance timeframe. (FMI and NACS, No. 78 at p. 2)

In response to comments about additional time needed for out-of-date building codes to be updated, ACHR News[50] stated that ''in the U.S., states usually adopt mechanical codes from either the International Code Council (''ICC'') or the International Association of Plumbing and Mechanical Officials (''IAMPO'').'' In May 2024, the ICC published the 2024 I-Codes,[51] including the 2024 International Mechanical Code (''2024 IMC'').[52] The 2024 IMC includes provisions for refrigeration equipment building codes that are commonly adopted by most states, and in the May 2024 version, section 1101.2.1, ''Group A2L, A2, A3 and B1 high probability equipment,'' states that equipment using Group A2L, A2, A3 or B1 refrigerant shall comply with UL 484, UL/CSA 60335–2–40, or UL/CSA 60335–2–89. Therefore, DOE expects that all States will have updated their building codes to reference the ICC or other equivalent standards to reference updated safety standards by the 2029 compliance year.

In response to the comment from FMI and NACS about market transition to alternative refrigerants, as discussed in section III.A.2.a of this document, NAFEM commented that most self-contained CRE today, in the commercial bar space, already uses alternate refrigerants, (almost exclusively R–290) and stated that they already made the change to R–290 from R–134a more than 5 years ago. (NAFEM, No. 83 at pp. 3–5) Kirby also commented that much of the current equipment incorporates new refrigerants, particularly self-contained models that utilize R–290. (Kirby, No.

[50] See *www.achrnews.com/articles/147113-finalizing-the-a2l-provisions-in-2024-mechanical-codes.*

[51] See *http://codes.iccsafe.org/codes/i-codes/2024-icodes.*

[52] See *http://codes.iccsafe.org/content/IMC2024V1.0/chapter-11-refrigeration.*

66 at p. 2) Additionally, DOE notes that over 93 percent of ENERGY STAR equipment have already transitioned to low GWP, hydrocarbon refrigerants.[53] In response to FMI and NACs comment, DOE assumes that manufacturers will comply with applicable regulations. As a result, DOE does not anticipate that the challenges referenced by FMI and NACS will make it impossible for industry to comply with AIM Act regulations within the allotted compliance timeframe.

Large-Capacity Self-Contained Equipment Using A2L Refrigerants

This sub-section addresses large-capacity self-contained CRE.

In response to the October 2023 NOPR, Hussmann commented that DOE applied a design option of R–290 variable-speed compressor to classes such as SVO.SC.M that contain some very large models, such as a 12-ft-long by 6-ft-wide shop-around island case with a refrigeration load of approximately 24,000 Btu/hr that Hussmann manufactures. (Hussmann, No. 80 at p. 5) Hussmann stated that not all self-contained product types have been switched over to R–290 yet, especially large CRE that require larger charges of R–290 or an A2L refrigerant. (Hussmann, No. 80 at p. 6) Hussmann recommended that DOE establish baselines with what is currently available in the market. (*Id.*) Hussmann further stated that these models will have to be transitioned to a new A2L refrigerant by January 1, 2025 to comply with the October 2023 EPA Final Rule, so the assumed R–290 energy efficiency improvement in DOE's analysis does not apply. (*Id.*) Hussmann commented that, regarding the self-contained equipment that will transition to an A2L refrigerant, Hussmann anticipates that there is no appreciable reduction in energy consumption based on preliminary lab testing. (*Id.* at p. 6)

Zero Zone stated that DOE only evaluated and tested equipment with relatively small volume, adding that the smaller-volume equipment is not representative of the entirety of the market with self-contained equipment available over 200 ft^3 of volume. (Zero Zone, No. 75 at p. 3)

Zero Zone, Hussmann, and SCC commented that larger volume CRE would require multiple condensing units for R–290. (Zero Zone, No. 75 at p. 3; Hussmann, No. 80 at p. 5; SCC, No. 74 at p. 2) SCC further commented that this would result in compressors with lower EER, given that compressors with lower capacity tend to be less efficient. (SCC, No. 74 at p. 2) Hussmann added that R–290 is not a practical refrigerant to use because multiple separate condensing units/refrigerant circuits would be needed, which is prohibited by a lack of physical space and by product cost constraints. (Hussmann, No. 80 at p. 5)

Zero Zone commented that the use of larger charge propane systems is not as simple as buying and attaching larger units because the safety standards will require additional testing to confirm the larger charge will not be a safety issue for larger charge propane systems. (Zero Zone, No. 75 at p. 4) Zero Zone also commented that equipment with larger charges will need additional mitigation components, including sensors, controls, and fans. (*Id.*) Zero Zone stated that instead of the additional complexity and higher costs of the larger-charge propane systems, end users may want to purchase larger-charge A2L self-contained equipment, and DOE should set energy levels that would allow the use of other refrigerants. (*Id.*)

In the August 2024 NODA, DOE updated its approach for selecting representative units for the engineering analysis from the October 2023 NOPR. 89 FR 68788, 68790. The updated approach was based on feedback, such as the comments summarized in the preceding paragraphs, received from manufacturers and additional analysis conducted since the October 2023 NOPR. This updated approach indicated that larger CRE units, which contain more refrigerant than smaller units, would require more R–290 refrigerant than the maximum allowable charge size specified by UL 60335–2–89. *Id.* For such equipment, manufacturers will likely instead need to implement other low-GWP refrigerant options to comply with the GWP limits in the October 2023 EPA Final Rule. *Id.* In the August 2024 NODA, DOE identified R–454C and R–455A as alternatives that are mildly flammable (designated ''A2L'') refrigerants currently available and could be used for units with cooling capacities greater than would be achievable using an allowable R–290 charge size. *Id.*

In recognition of this, DOE evaluated the volume or TDA limit which corresponded to the UL standard charge limits based on refrigeration load per cabinet size and refrigerant charge per refrigeration system capacity. Based on the results, in the August 2024 NODA, DOE analyzed two different representative capacities for the following seven equipment classes: VOP.SC.M, SVO.SC.M, HZO.SC.L, SOC.SC.M, VCT.SC.M, VCT.SC.L, and VCS.SC.L.[54] *Id.* For each of these seven classes, DOE assumed the use of an A2L refrigerant for the large capacities and R–290 for the non-large capacities in the August 2024 NODA. *Id.*

Also, in the August 2024 NODA, DOE analyzed a smaller representative capacity using R–290 refrigerant for the SOC.SC.M equipment class, as compared to the representative capacity proposed in the October 2023 NOPR. *Id.* DOE concluded that the representative capacity analyzed for the SOC.SC.M equipment class in the October 2023 NOPR using R–290 refrigerant exceeds the likely capacity limit for R–290 based on the 304 g charge limit. Instead, DOE analyzed an A2L refrigerant in the August 2024 NODA. *Id.* Updating the representative capacity for SOC.SC.M is consistent with the precedent the March 2014 Final Rule where DOE changed the representative total display area for HCT.SC.I from 5.12 ft^2 in the 2013 NOPR to 4.78 ft^2 in the March 2014 Final Rule.[55]

Table IV.6 presents the seven equipment classes for which DOE analyzed two representative capacities in the August 2024 NODA. In the August 2024 NODA, DOE presented analytical results of this approach for each of these seven equipment classes. *Id.* at 89 FR 68790–68791.

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[53] *www.energystar.gov/productfinder/product/certified-commercial-refrigerators-and-freezers/results* (last accessed Oct. 23, 2024).

[54] The equipment classes are designated by equipment family, condensing unit configuration, and operating temperature. Equipment Families: VOP—Vertical Open; SVO—Semi-Vertical Open; HZO—Horizontal Open; VCT—Vertical Closed Transparent; HCT—Horizontal Closed Transparent; VCS—Vertical Closed Solid; HCS—Horizontal Closed Solid; SOC—Service Over Counter; CB—Chef Base; PD—Pull Down. Condensing Unit Configurations: RC—Remote Condensing; SC—Self Contained. Operating Temperatures: H—High Temperature; M—Medium Temperature; L—Low Temperature; I—Ice Cream Temperature.

[55] The 2013 NOPR TSD and 2014 Final Rule TSD are available at: *www.regulations.gov/document/EERE-2010-BT-STD-0003-0051; www.regulations.gov/document/EERE-2010-BT-STD-0003-0102.*

Table IV.6 Equipment Classes with Two Representative Capacities

Condensing Unit Configuration	Equipment Family	Operating Temperature (°F)	Equipment Class Designation	Volume ("V") [ft^3] or TDA [ft^2] Range	Representative Capacity [ft^3] or [ft^2]
Self-Contained (SC)	Vertical Open (VOP)	≥ 32	VOP.SC.M	TDA ≤ 17	14.93*
				TDA > 17	29.86
	Semivertical Open (SVO)	≥ 32	SVO.SC.M	TDA ≤ 15	12.8*
				TDA > 15	25.6
	Horizontal Open (HZO)	< 32	HZO.SC.L	TDA ≤ 35	12*
				TDA > 35	50
	Service Over Counter (SOC)	≥ 32	SOC.SC.M	TDA ≤ 40	20
				TDA > 40	51*
	Vertical Closed Transparent (VCT)	≥ 32	VCT.SC.M	V ≤ 100	49*
				V > 100	150
		< 32	VCT.SC.L	V ≤ 70	49*
				V > 70	73.5
	Vertical Closed Solid (VCS)	< 32	VCS.SC.L	V ≤ 100	49*
				V > 100	150

* These representative volumes or TDAs were analyzed in the October 2023 NOPR.

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DOE received no comments indicating that the suggested refrigerated volume or TDA levels delineating transition to the large-capacity range should be changed for any of the seven identified classes, nor that additional classes should have separate large-capacity ranges. Hence, DOE is finalizing these ranges as presented in the August 2024 NODA.

DOE notes that while DOE is amending the standards in this final rule for the non-large capacity ranges for the seven equipment classes listed in table IV., DOE is continuing to analyze the large capacity ranges for these classes. Therefore, DOE is not discussing comment specific to the analysis for the large capacity ranges and is not amending the standards for the large capacity ranges in this final rule.

Therefore, for the seven large self-contained equipment classes, the standards presented in this rulemaking remain the same as the current standards for each respective class. DOE has addressed all cost related comments, including comments about the cost of A2L equipment in section II.B.3 of this document.

Non-Large Self-Contained Equipment Using R–290 Refrigerant

This sub-section addresses comments and issues specific to analysis for the self-contained classes determined to be in the smaller capacity range for which R–290 refrigerant is appropriate.

To account for the December 2022 EPA NOPR, DOE proposed that all manufacturers would be able to convert self-contained CRE to R–290 and, therefore, proposed a more stringent efficiency level than the current DOE standard as the analyzed baseline in the October 2023 NOPR. 88 FR 70196, 70227–70228. DOE initially determined the energy use associated with the defined baseline efficiency levels for each equipment class assuming use of single-speed R–290 compressors, and selecting for the analysis of each representative unit the more-efficient suitably-sized compressor based on data available at the time of the analysis from two commonly used compressor manufacturers. *Id.* at 88 FR 70228. The equipment daily energy use reduction determined for the use of R–290 in baseline models presented in the October 2023 NOPR is shown below in table IV.7. Baseline efficiency levels used in the analysis for these classes were equal to the current DOE energy conservation standard level for the class, expressed in kWh per day, reduced by these percentages, to account for the refrigerant transition.

Table IV.7 Effect of Use of R-290 on Energy Use in Baseline Models for the October 2023 NOPR Analysis

Equipment class	Energy use reduction below DOE standard (%)
VOP.SC.M	4.4
SVO.SC.M	9.2
HZO.SC.M	19.5
HZO.SC.L	4.8
VCT.SC.M	18.8
VCT.SC.L	2.8
VCS.SC.M	20.5
VCS.SC.L	8.5
HCT.SC.M	0.0
HCT.SC.L	0.0
HCS.SC.M	20.1
HCS.SC.L	22.1
SOC.SC.M	2.7
VCT.SC.I	0.0
HCT.SC.I	0.0
VCS.SC.I	3.3

In response to the October 2023 NOPR, DOE received several comments on the proposed baseline levels for self-contained equipment.

NEEA and ASAP *et al.* supported the adoption of R–290 as the new baseline for self-contained CRE. (NEEA, No. 89 at p. 5; ASAP *et al.,* No. 79 at p. 4) Kirby commented that much of the current equipment incorporates new refrigerants, particularly self-contained models that utilize R–290. (Kirby, No. 66 at p. 2)

ASAP *et al.,* agreed with DOE's approach but expressed concern that DOE could be underestimating the efficiency improvements, noting that, in the November 2023 Public Meeting, Zero Zone referenced a 40-percent reduction in energy usage for the VCT.SC.M equipment class when using propane compared to 18.8 percent in DOE's analysis. (ASAP *et al.,* No. 79 at p. 4) ASAP *et al.,* commented that underestimating the efficiency gains yielded by switching to propane refrigerant would result in CRE standards that are less stringent (*i.e.,* requiring less additional design options) than anticipated by the engineering analysis. (*Id.*)

In response to the comment from ASAP *et al.* about DOE underestimating energy savings, DOE notes that this was a misunderstanding by Zero Zone that was explained during the November 2023 Public Meeting. (See November 2023 Public Meeting Transcript, No. 64 at pp. 88–89) Zero Zone's comment suggested that they thought that the percentage energy use reduction of the proposed TSL level (roughly 40 percent) was due only to conversion to R–290, when reduction for the R–290 conversion alone was 18.8 percent.

Zero Zone and AHRI disagreed with DOE's decision to reevaluate energy levels based only on R–290. (Zero Zone, No. 75 at p. 3; AHRI, No. 81 at p. 8) AHRI stated that the engineering analysis worksheet used R–404A as the pre-baseline with the new baseline of EL 0 based on R–290. (*Id.* at p. 8) However, AHRI stated that EL 0 (*i.e.,* the baseline efficiency level) should have been based on R–404A refrigerant and DOE should not assume that all CRE products have been converted to R–290 because this is not yet allowed by the EPA. (*Id.*) AHRI commented that other options currently used include R–450A, R–513A, and R–600a. (*Id.*) AHRI stated that DOE's analysis does not align with UL safety requirements as R–290 cannot be used in cases with shaded pole fan motors. (*Id.*) AHRI added that the speculation in the DOE analysis does not reflect current models; therefore, DOE cannot expand on what options are available. (*Id.*)

NAMA recommended against using baseline levels for CRE based on anticipated manufacturer design changes made in response to the December 2022 EPA NOPR, as design changes for the EPA regulation are not the baseline for an energy efficiency rulemaking. (NAMA, No. 85 at p. 29) NAMA commented that the EPA-proposed regulation requires reductions in GWP, not an automatic effective date for every unit, for every platform, and the December 2022 EPA NOPR is not final; consequently, it would be impossible for NAMA to provide empirical data on the amount of energy savings assigned to meeting the EPA proposed regulation. *(Id.)*

In response to AHRI suggestions to analyze additional refrigerants other than R–290 for self-contained equipment classes, DOE notes that its analysis assumes prior conversion of refrigerant to meet the October 2023 EPA Final Rule, which requires GWP less than 150. 88 FR 73098, 73149. Both R–450A and R–513A have higher GWPs (601 and 630 respectively),[56] thus they would not be appropriate options to represent an EPA-compliant baseline. DOE also notes that R–600a has similar compressor efficiencies to R–290, and therefore the performance of units using R–290 should be similar to that of those using R–600a. Regarding the comment that not all models have transitioned to R–290, as indicated, the analysis assumption was that a transition to a refrigerant with GWP less than 150 would be required by January 1, 2025—and this requirement was finalized in the October 2023 EPA Final Rule. Consistent with comments that many models have already converted to R–290 (see, *e.g.,* NAFEM, No. 83 at p. 5) and feedback in manufacturer interviews that manufacturers expect the market to transition to R–290 for models for which the charge limits are sufficient, DOE has finalized its analysis assuming conversion to R–290 to meet EPA regulations when charge limits prescribed by UL–60335–2–89 and SNAP would not be exceeded.

NAFEM commented that, as stated during the November 2023 Public

[56] The values included in the text have been calculated as prescribed by the EPA in 40 CFR 64.64.

Meeting, there are several components that must be flame-resistant or spark-proof and available in a number of applications, particularly in fan motors and both the condenser and the evaporator fan motors, as well as other remote sensing equipment. (NAFEM, No. 83 at p. 16) NAFEM pointed out that, for its small manufacturers, parts are not available for being spark-proof and available at R–290, and volumes are so low that they do not intend to put those products in. (*Id.*) NAFEM commented that DOE assumes a complete conversion to R–290, especially in self-contained units, and advised DOE to slow down its process for CRE until the industry has a better understanding of how to meet AIM Act requirements, which do not require R–290. (*Id.*)

In response to the comment from NAFEM about spark-proof components, DOE notes that, in this final rule and consistent with the October 2023 NOPR and August 2024 NODA, DOE has accounted for the cost of spark-proof components. Because DOE has analyzed R–290 as the baseline for all non-large self-contained classes in response to the October 2023 EPA Final Rule, the costs associated with additional components necessary to comply with safety standards for R–290 are incorporated into the core case cost. In addition, DOE has tested units as small as 7 ft^3 utilizing R–290 refrigerant and observed units utilizing R–290 as small as 2.34 ft^3.[57] Based on that testing, DOE disagrees that parts are not available at low volumes. Further, during the November 2023 Public Meeting, True Manufacturing commented that the technology for self-contained refrigeration to transition to R–290 is already available. (November 2023 Public Meeting Transcript, No. 64 at pp. 74–75)

Hoshizaki and Hussmann disagreed with DOE's approach of accounting for only one refrigerant in the baseline. (Hoshizaki, No. 76 at p. 3; Hussmann, No. 80 at p. 6) Hoshizaki commented after reviewing the ENERGY STAR website it found that the top 25 percent of the market uses multiple refrigerants and recommended that DOE should review refrigerants used in each category and size and analyze energy savings for each refrigerant type for each machine type and size. (Hoshizaki, No. 76 at p. 3)

In response to the comments from Hoshizaki and Hussmann, DOE notes that after reviewing the ENERGY STAR website,[58] only two refrigerants used in rated equipment meet the GWP limit finalized in the October 2023 EPA Final Rule: R–600a and R–290. As previously noted in the October 2023 NOPR TSD, DOE is aware of small CRE equipment using R–600a; however, DOE has determined that R–600a has similar refrigeration-cycle efficiency as R–290 and that the performance of CRE using R–290 is representative of CRE using R–600a. Therefore, in this final rule analysis, DOE has determined that the R–290 baseline in response to the October 2023 EPA Final Rule is representative of the alternative refrigerants that may be used in non-large self-contained equipment.

Hillphoenix commented that, according to DOE's engineering spreadsheet, the R–290 versus R–404A efficiency gains attributed to the compressor are 34.7 percent for medium-temperature (''MT'') and 5.6 percent for low-temperature (''LT'') applications. (Hillphoenix, No. 77 at p. 7) Hillphoenix requested that Copeland, the largest U.S.-based refrigeration compressor manufacturer, compare LT and MT compressor efficiencies. (*Id.*) Hillphoenix commented that, based on Copeland's actual compressor performance and EER data, the percentage in energy savings for R–290 versus R–404A in LT applications averages approximately 14 percent, compared to DOE's value of 5.7 percent, and in MT applications it averages approximately 22 percent, compared to DOE's value of 34.7 percent. (*Id.* at p. 8)

NAFEM commented that the CRE industry only saw an energy efficiency improvement closer to 10 percent when switching from R–134a to R–290 more than 5 years ago. (NAFEM, No. 83 at p. 5) AHRI commented that, looking at only the refrigerant, its members anticipate that no appreciable reduction in energy consumption will result from transitioning to low-GWP refrigerants. (AHRI, No. 81 at p. 8)

In response to comments from Hillphoenix, NAFEM, and confidential comments received by DOE that the energy use reduction attributed in the October 2023 NOPR analysis to conversion to R–290 may not be appropriate, DOE reviewed new available compressor performance data and updated its analysis. This is similar to DOE's action in the March 2014 Final Rule, in which DOE updated its compressor assumptions in response to comments received on the 2013 NOPR. 79 FR 17725, 17760. Similarly, in this rulemaking, DOE has updated its analysis for the R–290 baseline energy use level. As described above, in the October 2023 NOPR, DOE determined energy use reduction associated with R–290 transition based on the more efficient appropriately-sized compressor option for which performance data was available from two commonly used compressor manufacturers. 88 FR 70196, 70228. However, based on updated compressor data and feedback provided by commenters, in the August 2024 NODA and this final rule, DOE added compressor data from an additional compressor manufacturer and determined energy use reduction using the average rather than best efficiency of appropriately-sized available compressors. 89 FR 68788, 68792. Based on the updated data, on average, the medium-temperature energy savings presented in this final rule are smaller than in the October 2023 NOPR and the low-temperature energy savings presented in this final rule are larger than in the October 2023 NOPR, an adjustment that is consistent with feedback from Hillphoenix. These updated energy savings were presented in the August 2024 NODA and are also shown in table IV. of this final rule.

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[57] See *www.regulations.doe.gov/certification-data/CCMS-4-Refrigeration_Equipment_-_Commercial__Single_Compartment.html#fq=Chilled_or_Frozen_Volume_in_cubic_feet__ft3if_Applicable_d%3A%5B0.33%20TO%202.29%5D&fq=modelNumber%3A''UCF20HC%5C-25''&fq=Basic_Model_Number_m%3A''UCF20HC%5C-25''&q=Product_Group_s%3A''Refrigeration%20Equipment%20-%20Commercial%2C%20Single%20Compartment''*.

[58] See *www.energystar.gov/productfinder/product/certified-commercial-refrigerators-and-freezers/results.*

Table IV.8 Reduction in Energy Use of the Baseline Based on R-290 Refrigerants

Equipment Class	Energy use reduction below DOE Standard – R-290 (%)
VOP.SC.M	1.3
SVO.SC.M	9.7
HZO.SC.M	14.7
HZO.SC.L	2.6
VCT.SC.M	15.1
VCT.SC.L	5.5
VCS.SC.M	19.9
VCS.SC.L	6.1
HCT.SC.M	0.0
HCT.SC.L	0.0
HCS.SC.M	12.6
HCS.SC.L	0.0
SOC.SC.M	11.0
VCT.SC.I	0.0
HCT.SC.I	0.0
VCS.SC.I	6.9

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In response to the August 2024 NODA, Delfield commented that it agrees with DOE's updated compressor approach of using an average EER rather than the best EER value, especially for new compressors whose EER values have not been validated. (Delfield, No. 99 at p. 2) Hillphoenix and the CA IOUs also supported DOE's updated approach. (Hillphoenix, No. 110 at p. 3, CA IOUs, No. 113, at p. 2) Hillphoenix commented that they support DOE's revised compressor energy savings for low and medium temperature applications, and the CA IOUs commented that the updated R–290 compressor efficiency approach provides a more accurate representation of the baseline energy use for R–290 compressors. *Id.*

However, Delfield disagreed with DOE's inclusion of energy efficiency improvements resulting from switching to R–290 refrigerant in the baseline given that most of the industry has already switched to R–290 refrigerant over 7 years ago. (Delfield, No. 99 at pp. 1–2) Delfield further commented that the CRE models that DOE tested and reverse engineered include a combination of HC and HFC/HFO. (*Id.*) Delfield expressed concern that the HFC/HFO units would inflate the baseline energy use. (*Id.*) Delfield requested further explanation of how including R–290 single-speed compressor as an EL 0 for VCS.SC.M and L classes is not double counting the energy savings attributed to switching to R–290. (*Id.*)

In response to Delfield, the March 2014 Final Rule, which established the current standards that became effective on March 27, 2017, was based on an analysis using the most commonly-used, industry-standard refrigerants at the time of the March 2014 Final Rule. 79 FR 17725, 17754. DOE stated that it considered two refrigerants, R–134a and R–404A, because these are the industry-standard choices for use in the vast majority of commercial refrigeration equipment. 79 FR 17725, 17753. In support of this final rule, DOE reviewed models that are representative of energy use at or near the current standard and found that, for most analyzed equipment classes, R–134a and R–404A are representative. Therefore, to account for the refrigerant transition mandated by the October 2023 EPA Final Rule, DOE developed a baseline for self-contained equipment subject to this final rule using R–290 as the baseline. Because R–290 has a higher refrigeration-cycle efficiency than R–134a and R–404A, DOE reviewed R–290 compressors currently available for CRE and similarly found that R–290 compressors typically have higher EERs than R–134a and R–404A. Therefore, the R–290 baseline developed for this final rule uses less energy than the current standard for most equipment classes. As noted in table IV.8, DOE has analyzed the current standard as the R–290 baseline for the HCT.SC.M, HCT.SC.L, HCS.SC.L, VCT.SC.I, and HCT.SC.I equipment classes based on DOE's determination that R–290 is representative of baseline CRE for these classes. These findings are also supported by a review of models with these refrigerants certified to DOE's CCD and tested by DOE.

CRE in Public Spaces

In response to the October 2023 NOPR, NAMA commented that in order to be compliant with ASHRAE, manufacturers are required to use no more than 114 grams of R–290 for equipment placed in public hallways or lobbies rather than up to 150 grams, and that a 114-gram refrigerant charge will not allow a significant number of machine models to be updated or enlarged, and the leak testing required by the new 60335–2–89 version will likely require a very precise flammable refrigerant sensor that does not exist. (NAMA, No. 85 at p. 7)

NAFEM relayed a comment from one of its members that manufacturers are interested in converting to R–290, but if a piece of equipment is used in a public space, it must meet ASHRAE 15, which limits the actual charge amount to 114 grams, not 150 grams as stated in the October 2023 NOPR TSD and October 2023 NOPR. (NAFEM, No. 83 at p. 16) NAFEM commented manufacturers are limited in size of equipment by that

conversion and cannot convert if the product cannot be sold. (*Id.*)

In response to the comments from NAMA and NAFEM, DOE notes that this same restriction applies to refrigerated bottled- or canned-beverage vending machines (''BVMs''), and DOE has tentatively determined that the 114 g limit would not restrict any currently available BVM units from transitioning to R–290 refrigerant. 88 FR 33968, 33976. While there are differences between the BVM and CRE test procedures and cabinet construction, DOE anticipates that any CRE designed to serve the same market as BVMs (*e.g.,* in public hallways or lobbies) would also be able to transition to R–290 compressors without exceeding the 114g limit.

In addition, commenters did not provide examples of specific models or types of models that are intended for areas of egress and would use more than 114 grams of R–290 refrigerant. DOE reviewed the three VCT.SC.M models under 30 ft^3 using R–290 that it tested, based on NAMA's request for separate consideration of these models, and found that all three models used less than 114 grams of R–290. The volume of these three models are 8.72 ft^3, 12.98 ft^3, and 23.90 ft^3.

Remote Condensing Equipment

In the October 2023 NOPR, DOE noted that remote condensing CRE is also impacted by the December 2022 EPA NOPR, however, in AHRI 1200 the test procedure calculates an expected compressor energy consumption based on the case refrigeration load, independent of the refrigerant type of the compressor. 88 FR 70196, 7028870228. Hence, DOE initially determined that alternative refrigerants in remote CRE cases do not result in changes in measured energy consumption. *Id.*

DOE did not receive comments on this approach, and therefore, consistent with the analysis in the August 2024 NODA, in this final rule DOE is analyzing the current standard as the baseline for remote condensing equipment.

Hussmann commented that, while EPA's effective date for self-contained equipment classes is January 1, 2025, the effective date for the same equipment classes for remote condensing products is January 1, 2026 or January 1, 2027, based on the type of connected refrigeration system. (Hussmann, No. 80 at p. 6) Hussmann stated its belief that, for these remote condensing classes, it is too soon to comment on energy use reduction for equipment that will be transitioned to A2L refrigerants not even yet allowed by EPA SNAP and many building codes around the nation. (*Id.*)

In response to the comment from Hussmann on SNAP approval and building codes, as noted in the previous section, SNAP 26 was finalized to allow A2L refrigerants in accordance with UL 60335–2–89 and ASHRAE 15/34. In addition, based on a webinar by AHRI,[59] as of June 2024, only 6 states do not currently allow A2L refrigerants, far fewer than in August 2022 when 36 states did not allow A2L refrigerants. Therefore, DOE anticipates that by the compliance year of 2029 building codes should not impact a manufacturer's ability to transition to A2L refrigerants.

iii. Engineering Assumptions

Appendix 5A of the October 2023 NOPR TSD itemized baseline design details and key engineering assumptions regarding component performance affecting energy use that were used in the engineering spreadsheet analysis of primary equipment class representative units. The October 2023 NOPR notice provides additional discussion regarding baseline designs. 70196, 70228–70230. DOE received comments in response to the baseline engineering assumptions used in the October 2023 NOPR analyses. Specifically, DOE received several comments regarding the insulation R-value, insulation thickness, fan motors, anti-sweat heater controls, lighting, and conduction loads in the engineering analysis for the baseline. The August 2024 NODA and its accompanying support document present revisions made to the analyses that DOE made in response to the October 2023 NOPR comments. DOE received additional comments on these topics in response to the August 2024 NODA. Both the NOPR and NODA comments and DOE's final determinations regarding baseline design details are discussed in the following paragraphs.

In response to the August 2024 NODA, The CA IOUs commented that they supported the updated baseline design components because these they more accurately reflect current baseline models in the CRE market. (CA IOUs, No. 113, at p. 1)

Insulation R-Value

In the October 2023 NOPR engineering analysis, DOE assumed an R-value for polyurethane foam of 8 (ft^2-°F-hr/Btu) per inch. DOE received the following comments in response.

In response to the October 2023 NOPR, Hussmann commented that DOE's assumption of the R-value per inch of the equipment insulation is unrealistic, stating that R-values per inch of the foam itself for CRE are much closer to 6.5 per inch than they are to the 8.0 shown in DOE's engineering spreadsheet.[60] (Hussmann, No. 80 at p. 5) Hussmann agreed with DOE's determination in the October 2023 NOPR TSD to use an adjusted R-value per inch of 4.0 for the finished foam panels to account for edge effects and gasket heat losses. (*Id.*)

ITW commented that DOE should revise its CRE engineering spreadsheet assumptions to better reflect the current state of the industry in terms of the thermal conductivity of the insulating foam used in the construction of refrigerated cabinets. (ITW, No. 82 at p. 2) ITW commented that the average CRE industry R-value is between 6.3 and 7.1 and that this is backed up by data and a recent NAFEM survey in which 71.5 percent of the CRE manufacturers surveyed reported an R-value for their insulation between 6.4 and 7.4. (*Id.* at p. 3) Based on ITW's product experience, competitive evaluations, technical data points, and the responses from the NAFEM survey, ITW requested DOE change the baseline R-value from 8 to 6.5. (*Id.* at p. 4)

NAFEM provided results of its manufacturer survey. Results of this summary regarding insulation K factor are summarized in table IV.9. (NAFEM, No. 83 at pp. 38–39)

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[59] See *www.youtube.com/watch?v=aETuPis5cAM.*

[60] *The October 2023 NOPR engineering analysis spreadsheet is available at www.regulations.gov/document/EERE-2017-BT-STD-0007-0055.*

Table IV.9 NAFEM Survey Results for Insulation K Factor

K Factor Answer Choices*	R-Value (converted from K factor)*	% of responses	# of Responses
$K \leq 0.125$	$R \geq 8$	14.29	1
$0.125 < K \leq 0.130$	$8 > R \geq 7.7$	0	0
$0.130 < K \leq 0.135$	$7.7 > R \geq 7.4$	14.29	1
$0.135 < K \leq 0.140$	$7.4 > R \geq 7.1$	14.29	1
$0.140 < K \leq 0.145$	$7.1 > R \geq 6.9$	14.29	1
$0.145 < K \leq 0.150$	$6.9 > R \geq 6.7$	14.29	1
$0.150 < K \leq 0.155$	$6.7 > R \geq 6.5$	28.57	2

* Note that the K factor values provided by NAFEM did not include units and were presented including an additional 0 (*i.e.*, 0.0125 instead of the 0.125, as presented in the table above). Based on other commenter feedback (*i.e.,* ITW, No. 82 at p.3 cited in the preceding paragraph) and typical K values for the CRE industry, DOE has edited NAFEM's survey results to reflect the likely intended values, in units of Btu-in/h-sqft-°F. If the intended units were instead Btu/h-ft-°F, the conductivity ranges would be 20% higher than indicated in the table, and the resistance values correspondingly incrementally lower. However, the former assumption leads to conclusions more consistent with other comments regarding industry-average R-values.

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In response to the comment from Hussmann, DOE notes that the R-value used in the October 2023 NOPR engineering analysis was 8 per inch, not an adjusted R-value of 4.0 per inch. DOE believes that Hussmann was referring to the June 2022 Preliminary TSD, which applied a multiplier of 0.5 to the R-value per inch, resulting in an adjusted R-value of 4.[61] This adjustment was done to adjust the heat load in addition to other adjustments to design specifications for heat load adjustments (*i.e.,* infiltrated air mass flow), however, in the October 2023 NOPR, based on comments in response to the June 2022 Preliminary Analysis, DOE analyzed a revised R-value of 8 per inch with the infiltrated air mass flow to be more consistent with the March 2014 Final Rule. 88 FR 70196, 70234.

In response to comments on the October 2023 NOPR analyzed R-value of 8 per inch, DOE reviewed these comments, and based on this review and consistent with commenter feedback, DOE presented a revised analysis in the August 2024 NODA with the R-value of polyurethane foam changed from 8 per inch to 6.5 per inch to represent the baseline R-value used by CRE models. 89 FR 68788, 68792.

In response to the August 2024 NODA, Hussmann agreed with DOE's update of the insulation R-value from 8 per inch to 6.5 per inch, as this is in line with the R-value of polyurethane blown foams used in the CRE market. (Hussmann, No. 108 at p. 2) Continental, AHRI, Hillphoenix, Delfield, and ITW also commented in support of DOE's updated R-values from 8 to 6.5 per inch. (Continental, No. 107 at p. 2; AHRI, No. 104 at p. 8; Hillphoenix, No. 110 at p. 4; Delfield, No. 99 at p. 2; ITW, No. 111 at p. 1)

In this final rule, DOE is maintaining 6.5 per inch to represent the baseline R-value used by CRE models.

Insulation Thickness

Several commenters expressed concerns with the insulation thickness analyzed in the October 2023 NOPR. For ease of reference, Evaporator Fan Control shows the insulation thickness assumed for each equipment class in the March 2014 Final Rule, the June 2022 Preliminary Analysis, and the October 2023 NOPR and the updated insulation thickness analyzed in this final rule, which is the same as presented in the August 2024 NODA.

[61] See table 5.5.4 of the Preliminary Analysis TSD, available at *www.regulations.gov/document/EERE-2017-BT-STD-0007-0016.*

Table IV.10 Comparison of Insulation Thickness Analyzed in the March 2014 Final Rule, June 2022 Preliminary Analysis, October 2023 NOPR, August 2024 NODA, and this Final Rule

Equipment Class	2014 Final Rule	Preliminary Analysis	NOPR	Final Rule (same as August 2024 NODA)
VOP.RC.M, VOP.SC.M, SVO.RC.M, SVO.SC.M, SOC.RC.M, SOC.SC.M	1.5	1.5	2	1.5
CB.SC.M	-	2	2	1.5
VOP.RC.L	2	2	2	2
CB.SC.L	-	2.5	2	2
HZO.RC.M, HZO.SC.M, VCT.RC.M, VCT.SC.M, VCS.SC.M, HCT.SC.M, HCS.SC.M	1.5	1.5	2.5	1.5
VCT.SC.H, VCS.SC.H	-	1.5	2.5	1.5
HZO.RC.L, HZO.SC.L, VCT.RC.L, VCT.SC.L, VCS.SC.L, HCT.SC.L, HCS.SC.L	2	2	2.5	2
VCT.SC.I, VCS.SC.I, HCT.SC.I	2.5	2.5	2.5	2.5

In response to the October 2023 NOPR, AHRI, SCC, and Hillphoenix stated that despite screening out increased insulation thickness as a design option, DOE has increased the 2023 baseline insulation thickness from the March 2014 Final Rule selected design levels. (AHRI, No. 81 at p. 7; Hillphoenix, No. 77 at pp. 3–4; SCC, No. 74 at p. 3) Hillphoenix also commented that equipment used to manufacture insulated structures is typically used to produce products in multiple covered DOE classes, therefore changes in insulation thickness of one equipment class would require changes in multiple classes, resulting in an increase in testing, recertification, and validation. (Hillphoenix, No. 77 at p. 4)

NAMA, Hussmann, and ITW commented that the insulation thickness assumed in the October 2023 NOPR is not representative of CRE products on the market today. (NAMA, No. 85 at p. 5; Hussmann, No. 80 at p. 4; ITW, No. 82 at pp. 2, 5) ITW commented that it is contradictory that DOE screened out increased insulation as a design option but have included an additional 0.5 inches of insulation in the baseline calculation for CRE in the October 2023 NOPR compared to the June 2022 Preliminary TSD. (ITW, No. 82, at p. 5)

NAMA stated that 1 inch to 1.5 inches is typical of nearly all machines including VCT.SC.M equipment. (NAMA, No. 85 at pp. 5, 15) Hussmann stated that the standard insulation thickness for medium-temp commercial refrigeration equipment is 1.5 inches and for low-temp equipment is 2.0 inches, and this should be considered when determining the energy limits. (Hussmann, No. 80 at p. 4) ITW requested that DOE change the baseline insulation thickness from 2.5 inches to 2.0 inches. (ITW, No. 82, at pp. 2, 5)

NAFEM provided results of a survey of its manufacturers for the insulation thickness in its units, which is presented in Table IV.. (NAFEM, No. 83 at pp. 36–37) DOE notes that the survey results provided by NAFEM do not specify the operating temperature of the surveyed equipment.

table IV.11 NAFEM Survey Results for Insulation Thickness

Range of Insulation Thickness for models 49–60 ft^3 [in]	% of Responses	# of Responses
$X \leq 1.5$	28.57	2
$1.5 < X \leq 1.75$	28.57	2
$1.75 < K \leq 2$	14.29	1
$2 < K \leq 2.25$	28.57	2
$2.25 < K \leq 2.5$	0.0	0

DOE reviewed comments in response to the October 2023 NOPR that requested that DOE review the baseline assumptions. Based on these comments, DOE presented a revised analysis in the August 2024 NODA. 89 68788, 68792. DOE has revised the insulation thicknesses to be consistent with the insulation thicknesses analyzed in the March 2014 Final Rule,[62] which are also consistent with comments received in response to the October 2023 NOPR, including the survey results presented by NAFEM, and DOE's reverse engineering data. DOE's engineering analysis is based on the following updated insulation thicknesses: medium- and high-temperature equipment with an insulation thickness of 1.5 inches, low-temperature equipment with an insulation thickness of 2.0 inches, and ice cream temperature equipment with an insulation thickness of 2.5 inches. See table IV.10 presented at the beginning of this section for further details.

In response to these updates in the August 2024 NODA, Hillphoenix and ITW agreed with DOE's decision to align insulation R-values and thickness to reflect current industry offerings. (Hillphoenix, No. 110, p. 4; ITW, No. 111 at p. 1) DOE has maintained these insulation thickness values in this final rule.

Fan Motors

In the October 2023 NOPR, DOE assumed a combination of ECM, shaded pole, and permanent split capacitor (''PSC'') evaporator, and condenser fan motors in the baseline representative unit, depending on the equipment class. For more details about the baseline evaporator and condenser fan motor types assumed in the October 2023 NOPR, see tables 5A.2.1 through 5A.2.4 of the October 2023 NOPR TSD.

In response to the October 2023 NOPR, NAMA, AHRI, Hussmann, and SCC commented that ECMs are already widely in use in the CRE industry since the 2017 standards. (NAMA, No. 85 at pp. 14, 23; AHRI, No. 81 at pp. 4–5; Hussmann, No. 80 at p. 4; SCC, No. 74 at p. 1) NAMA added that ECMs have been used in CRE designs for at least 5 years and several of its companies mentioned that they have been using ECM condenser and evaporator fan motors since 2013. (NAMA, No. 85 at pp. 14, 23) Hussmann and NAMA stated that DOE's baseline component assumptions should reflect the widespread use of ECMs. (Hussmann, No. 80 at p. 4; NAMA, No. 85 at p. 23) NAMA commented that this design option applies to VCT.SC.M units, and also VOP, and HZO units. (NAMA, No. 85 at p. 23) NAMA further commented that the savings achieved from transitioning to ECMs was in the vicinity of 2–2.5-percent improvement when it was introduced, adding that they agreed with DOE that the savings would be in the vicinity of 0.139 kWh/day. (*Id.*)

With respect to the comments from NAMA, AHRI, Hussmann, and SCC, DOE has reviewed the CRE teardown data it conducted on analysis units in support of this rulemaking and observed that a significant number of units, but not all units, contained ECM evaporator and condenser fan motors. Therefore, based on DOE's teardown data and consistent with commenters' feedback, DOE updated its assumptions regarding baseline fan motors for certain equipment classes in the August 2024 NODA. The analysis sets ECM as the baseline evaporator and condenser fan motor type for most equipment classes, but not all classes, which is consistent with the data available to DOE.

In response to the August 2024 NODA, Continental agreed with DOE's revised use of ECMs as the baseline, and stated that this revision should be applied to all equipment classes. (Continental, No. 107 at p. 2) Continental additionally stated that it does not utilize shaded pole (''SP'') motors in any R–290 products due to safety concerns and attempts to maximize product performance. (*Id.*)

ITW also commented in support of DOE's revised assumption that current CRE already incorporates the use of electronically commutated motors for evaporator and some condenser fan applications, and that revised efficiency levels now take this into consideration. (ITW, No. 111 at p. 1)

Hussmann and AHRI also agreed with DOE's assumption that EC fan motors should be the baseline fan motor assumption for the vast majority, if not all, equipment classes. (Hussmann, No. 108 at p. 2; AHRI, No. 104 at p. 8)

AHRI disagreed with DOE's assumption that shaded pole fan motors are used as the baseline for self-contained equipment using R–290 as a refrigerant, *e.g.,* in the SOC.SC.M class, noting that SP motors are considered potential ignition sources for a flammable mixture of R–290 and air that could be created in a leak scenario. (AHRI, No. 104 at p. 8) AHRI stated that it has always opted for EC fan motors for both the evaporator and condenser when using R–290. (*Id.*) ARHI stated that the additional cost of EC motors is worth the reduction in risk and avoidance of additional safety testing required by the UL standards when shaded pole motors are used with R–290. (*Id.*)

Delfield commented that several OEMs already use DC condenser fans and expressed concern that DOE expects savings on something that is already implemented to meet current energy regulations. (Delfield, No. 99 at p. 2) Delfield added that they have several units using DC fans that barely make current regulations so any reduction

[62] *See* Table 5A.2.2 Baseline Specifications in the March 2014 Final Rule TSD at *www.regulations.gov/document/EERE-2010-BT-STD-0003-0102.*

would likely prevent them from selling those products that are currently in demand from customers. (*Id.*)

Regarding the comment from Delfield, in this final rule DOE has analyzed ECM as the baseline evaporator and condenser fan motor type for most, but not all, equipment classes, consistent with the data available to DOE. In response to AHRI's comment about the use of shaded pole motors with R–290 refrigerant, DOE notes that these motors can be enclosed to be suitable for use with R–290, but agrees it may be more cost-effective to switch to ECM motors. On the other hand, the switch to ECM motors would make the model more efficient than simply converting the refrigerant. Rather than assume a manufacturer would, in response to the EPA October 2023 final rule requiring use of low-GWP refrigerants, implement ECMs on top of converting the refrigerant, thus achieving a higher efficiency as a post-refrigerant-transition baseline, DOE instead assumed that the baseline should be based only on the refrigerant conversion. For further details, see section 2, ''Design Specifications and Baseline Design Options'' in the NODA support document (see EERE–2017–BT–0007–0090 at pp. 10–14).

Anti-Sweat

In response to the October 2023 NOPR, Hillphoenix commented that, DOE utilized different amounts of anti-sweat heat for remote vs. self-contained equipment classes for the equipment classes SOC.SC.M and SOC.RC.M with the same case design options. (Hillphoenix, No. 77 at p. 4) Hillphoenix commented also that these two equipment classes are identical products (with the exception of an added compressor) and should use the same amount of anti-sweat wattage. (*Id.*) Hillphoenix stated that in DOE's engineering spreadsheet for the October 2023 NOPR, the self-contained class uses 90 watts of heat versus the remote class's 200 watts, and the lower wattage in the self-contained class will create sweating and condensation issues. (*Id.*) Hillphoenix stated that this violates the prohibition in EPCA of adopting energy standards that impair the functionality of a pre-existing product. (*Id.*) [63]

In response to Hillphoenix, DOE notes that, in the section 5.5.2 of the October 2023 NOPR TSD, DOE stated that the anti-sweat heater assumptions were based on data from directly analyzed units and manufacturer feedback. However, based on additional test data and feedback from commenters, DOE has updated the anti-sweat heater power for the SOC.SC.M class in this final rule, consistent with the August 2024 NODA. As indicated in the NODA support document, DOE revised its anti-sweat wattage assumptions in the August 2024 NODA analysis such that the wattages for the self-contained and remoted condensing service-over-counter models with 51 sq.ft. TDA are nearly the same at 190 W and 200 W, respectively (see table 2.9 for SOC.RC.M table 2.10 for SOC.SC.M).

Zero Zone commented that reduced energy levels will result in equipment designs with very low energy anti sweat heaters, which will be more likely to have condensate on surfaces because many end users do not have reliable humidity control on the store air conditioning. (Zero Zone, No. 75 at p. 4) Zero Zone commented also that customers will request anti-sweat heaters with higher power and, therefore, manufacturers will need to apply anti-sweat heater controllers. (*Id.*) Zero Zone stated that DOE should add the cost of anti-sweat controllers to the equipment cost when DOE calculates payback and energy savings. (*Id.*)

With respect to the comment from Zero Zone about additional costs associated with anti-sweat heater controllers, DOE has revised the anti-sweat heater powers assumed in the baseline for this final rule, which are consistent with the CRE market and are designed to prevent condensation buildup on surfaces. Therefore, DOE has determined that anti-sweat heater controllers are not required for baseline equipment in this final rule analysis. Additionally, DOE included neither anti-sweat heater controllers nor anti-sweat heat wattage reduction as design options in the August 2024 NODA analysis. DOE did not analyze additional cost for anti-sweat heater controllers because this was not considered as a design option.

DOE did not receive any comments in response to the August 2024 NODA which suggested alternative baseline anti-sweat heater wattages. Thus, DOE used the same wattage values for the final rule analysis.

Lighting for the HZO Equipment Family

In the October 2023 NOPR, DOE updated the lighting design specifications based on data available at that time to account for the energy consumed per foot of LED lights.[64] DOE received several comments in response to this update for the HZO equipment class.

In response to the October 2023 NOPR, NAMA and Hussmann stated that DOE applied lighting control design options to HZO equipment, which typically does not have lighting. (NAMA, No. 85 at p. 24; Hussmann, No. 80 at p. 5)

In response to the comments from NAMA and Hussmann, DOE reviewed its CRE test data for HZO units and observed that lighting is not included for them. Therefore, based on DOE's test data and commenter feedback, DOE removed lighting from the baseline design specifications, and the lighting control design option, for the HZO equipment class in its August 2024 NODA analysis. For further details, see the August 2024 NODA support document, (Tables 2.6, 2.7, 2.10, 3.8, 3.9, 3.22, 3.23, and 3.38). Additionally, DOE notes that updating the lighting design specifications for the HZO equipment family is consistent with the approach in the March 2014 Final Rule, where DOE updated the number of bulbs in the conditioned space for PD.SC.M from 2 to 3.[65]

DOE did not receive comments regarding lighting design specifications in response to the August 2024 NODA. Hence, DOE used the same lighting design specifications for its final rule analysis.

Conduction Loads

In response to the October 2023 NOPR, ITW commented that DOE should revise its CRE engineering spreadsheet assumptions to account for ancillary transmission losses (*i.e.,* conduction loads through thermal breaks, drain tubes, refrigerant lines, screws, bolts, internal assembly flanges, etc.). (ITW, No. 82 at p. 2) ITW stated that the accounting for these ancillary losses was dropped out between the June 2022 Preliminary Analysis and the October 2023 NOPR versions of the CRE engineering spreadsheet. (*Id.*) Specifically, ITW requested that DOE revert to the assumptions from the June

[63] EPCA states the following at 42 U.S.C. 6295(o)(4): the Secretary may not prescribe an amended or new standard under this section if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered equipment type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding and the failure of some types (or classes) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a standard for other types (or classes). (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(4))

[64] See section 5.5.8.2 and appendix 5A.2 of the October 2023 NOPR TSD.

[65] See tables 5.A.2.2 of the NOPR and March 2014 Final Rule TSD available at *www.regulations.gov/document/EERE-2010-BT-STD-0003-0102.*

2022 Preliminary Analysis engineering spreadsheet, where it included a 50-percent multiplier to calculate the adjusted R-value and, therefore, more properly account for these ancillary losses. (*Id.*)

With respect to the comment from ITW, DOE notes that, in this final rule analysis, DOE analyzed a revised R value of 6.5, which is on the low end of survey results provided by NAFEM. In addition, DOE calibrated the design specifications in the engineering spreadsheet to be representative of all units in each equipment class and account for a variety of factors that could affect energy use. Therefore, DOE has determined that an adjustment factor to the insulation thickness is not necessary for this final rule. As previously noted in the Insulation R-Value section, while DOE did include a 0.5 adjustment factor for the R-value in the June 2022 Preliminary Analysis, along with updates to infiltrated air-mass flow, DOE received feedback disagreeing with the infiltrated airflow approach in response to the June 2022 Preliminary Analysis. 88 FR 70196, 70234. Based on this feedback and feedback provided during manufacturer interviews, DOE re-evaluated the infiltrated-air mass flow and insulation design specifications in the October 2023 NOPR to be more consistent with the March 2014 Final Rule, *i.e.* increasing the infiltrated air assumptions for the October 2023 NOPR analysis as compared to the June 2022 Preliminary Analysis. *Id.* As a result, DOE determined that an R-value adjustment factor would have resulted in calculation of energy use far higher than the baseline for representative equipment designs in the October 2023 NOPR analysis. DOE similarly determined that an R-value adjustment factor would have been inappropriate for the August 2024 NODA analysis and did not apply such a factor.

DOE did not receive comments regarding conduction loads in response to the August 2024 NODA. Hence, DOE used the same input assumptions affecting conductions loads for its final rule analysis.

Other Engineering Assumptions

In response to the October 2023 NOPR, DOE received comments on several other proposed baseline engineering assumptions.

AHRI requested that DOE review the engineering analysis based on current technology in the field. (AHRI, No. 81 at p. 7)

NAMA commented that the assumptions about efficiency options outlined in the October 2023 NOPR TSD are deeply flawed, as are the baseline efficiency levels. (NAMA, No. 85 at p. 5) NAMA stated that current units at baseline already utilize LED lighting, higher efficiency compressors, higher efficiency fan motors, a high-performance door, and several other design options which have been used for the last several years, and that the design option list is therefore based on inaccurate baseline assumptions. (*Id.*) NAMA further commented requesting that DOE conduct a complete revision of its engineering analysis and all of the downstream analyses to show the very real impacts of standards in the October 2023 NOPR as well as in the August 2024 NODA. (*Id.* at p. 19) (NAMA, No. 112 at pp. 9) In response to the August 2024 NODA, NAMA further commented that it was disappointed in the accuracy of the design changes. (NAMA, No. 112 at p. 7) NAMA added that DOE did not substantially change the August 2024 NODA TSD based on NAMA's comments on the October 2023 NOPR TSD (NAMA, No. 112 at p. 7) NAMA added that DOE said that the August 2024 NODA analysis was updated in response to NAMA's comments on the October 2023 NOPR, however, it is not clear where the cost or energy efficiency pertaining to NAMA products has been updated. (*Id.*)

In addition, DOE received confidential comments requesting that DOE review certain baseline assumptions in the October 2023 NOPR.

In response to the comments from AHRI, NAMA, and the anonymous confidential commenter, in this final rule, DOE has revised certain baseline components and design specifications not already discussed in this section. Table IV.12 shows every baseline design specification that was updated in this final rule, consistent with the August 2024 NODA. For more details, see appendix 5A of the final rule TSD.

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Table IV.12 Updates to Baseline Engineering Assumptions

	Baseline Engineering Assumptions Updated in Final Rule						
Equipment Class	**Insulation Thickness**	**Length of LED(s) in the Conditioned Space**	**Number of Evaporator Fans**	**Infiltrated Air Mass Flow Rate**	**Discharge Air Temperature**	**Baseline Evaporator Temperature**	**Additional**
VOP.RC.M	X			X			
VOP.RC.L				X			
VOP.SC.M	X	X		X			
SVO.RC.M	X	X					
SVO.SC.M	X	X					
VCT.RC.M	X	X					
VCT.RC.L	X	X		X			
VCT.SC.H	X	X			X		
VCT.SC.M	X	X			X	X	
VCT.SC.L	X	X			X	X	
VCT.SC.I		X					
VCS.SC.H	X				X		
VCS.SC.M	X				X	X	Non-Door Anti-Sweat Power
VCS.SC.L	X					X	Non-Door Anti-Sweat Power
HCT.SC.M	X	X					
HCT.SC.L	X			X			Compressor Oversize Multiplier
HCT.SC.I		X		X			Compressor Oversize Multiplier
HCS.SC.M	X			X	X	X	Evaporator Fan Shaft Power
HCS.SC.L	X			X			Compressor Oversize Multiplier
CB.SC.M	X			X	X	X	Baseline Condenser Temperature, Compressor Oversize Multiplier
CB.SC.L			X	X			
HZO.RC.M	X	X	X				Number of Ballasts NOT in Conditioned Space, Evaporator Fan Shaft Power
HZO.RC.L	X	X	X				Number of Ballasts NOT in Conditioned Space
HZO.SC.M	X	X					Number of Ballasts NOT in Conditioned Space
HZO.SC.L	X	X					Number of Ballasts NOT in Conditioned Space
SOC.RC.M	X	X					
SOC.SC.M	X	X	X	X			Case Gross Refrigerated Volume, Case Length, Case Total Display Area, Number of Doors, Non-Door Glass Area, Non-Door Anti-Sweat Power, Wall Area, Evaporator Fan Shaft Power, Condenser Fan Shaft Power, Number of Condenser Fans

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The updates to the final rule engineering assumptions outlined above are consistent with the approach in the March 2014 Final Rule where DOE

changed certain baseline design specifications between the NOPR and the final rule. For example, in the March 2014 Final Rule, DOE updated: the number of bulbs in the conditioned space for PD.SC.M from 2 to 3 and the number of ballasts not in the conditioned space from 0 to 1, the non-door anti-sweat power for VCS.SC.M from 0W to 20W, the evaporator fan shaft power, condenser fan shaft power for VCT.SC.M from 6W to 9W and from 6W to 16W respectively, the number of fans for VCT.SC.M from 2 condenser fans to 1 condenser fan, the infiltrated air mass flow rate for VCT.SC.M from 10.61 lb/hr to 13.7 lb/hr, the evaporator temperature conditions for VCT.SC.M from a baseline evaporator temperature of 27 °F to 23 °F, and the compressor oversize multiplier for VCT.SC.M from 1.3 to 2.6.[66]

b. Higher Efficiency Levels

As part of DOE's analysis, the maximum available efficiency level is the highest efficiency unit currently available on the market. DOE also defines a ''max-tech'' efficiency level to represent the maximum possible efficiency for a given product.

In response to the October 2023 NOPR, ASAP *et al.* generally supported the engineering analysis but stated that there are some equipment classes where the max-tech levels are exceeded by a significant number of models on the market today. (ASAP *et al.,* No. 79 at p. 1) Thus, ASAP *et al.* encouraged DOE to further investigate these products and consider whether higher standards may be appropriate. (*Id.*)

ASAP *et al.* encouraged DOE to evaluate max-tech levels that are at least as high as the most efficient models available on the market. (*Id.* at p. 3) ASAP *et al.* commented that for several of the equipment classes analyzed, many models available on the market using R–290 refrigerant appear to exceed the max-tech efficiency level, including many ENERGY STAR-rated models for the VCS.SC.L equipment class, which represents 10 percent of CRE shipments. (*Id.*) ASAP *et al.* also pointed to DOE's CCD, which shows available models for the SVO.SC.M, VOP.RC.M, and SOC.RC.M that also exceed DOE's max-tech levels. (*Id.*) ASAP *et al.* commented that for several of these equipment classes (*e.g.,* VCS.SC.L, SVO.SC.M, VOP.RC.M), DOE has proposed to adopt the max-tech level as evaluated in the engineering analysis, suggesting that if DOE were to evaluate higher efficiency levels for these equipment classes, it is plausible that these higher levels would be cost-effective for purchasers. (*Id.*)

In response to the comment from ASAP *et al,* DOE reviewed certified CRE models currently available on the market that exceed the efficiency of the max-tech levels proposed in the October 2023 NOPR and found several potential explanations as to why certain models use less energy than the proposed and final max-tech levels. DOE observed a range of lighting powers for units with similar volumes, with some units using very low light compared to the industry average. DOE also noted differences in insulation thickness that exceeded the industry average. Additionally, DOE noted examples of units rated to the CCD using evaporator fan controls, particularly for units that are not intended to store perishable food or beverages. Evaporator fan controls are not considered as a design option in the final rule analysis, so they are not considered in the final rule max-tech level (see section IV.B.1.f of this document). DOE also found examples of units that exceed the max-tech efficiency levels due to unique technologies which other manufacturers may not be able to adopt. Based on this review, DOE has not found higher standards to be appropriate.

In response to the October 2023 NOPR, NAMA disagreed with DOE's energy saving estimates and design option levels for vertical, self-contained, transparent doors, medium temperature, and other categories using similar options. (NAMA, No. 85 at pp. 10, 11–12) NAMA commented that, according to its screening analysis, DOE presents inaccurate energy savings resulting from changes to more energy-efficient condenser fan motors, variable-speed compressors, occupancy-based lighting controls, triple-pane glass doors, insulation in door glass, and microchannel condensers. (*Id.* at pp. 11–12) NAMA commented also that DOE's estimate of 26.9-percent energy savings in the case of using design options 2–7 is overstated by a factor of at least three. (*Id.* at p. 12) NAMA stated that once design options that DOE has double counted (*e.g.,* DC condenser fan motors) are eliminated, the real estimate should result in a minimum energy standard that returns at 9 percent rather than 26.9 percent. (*Id.*) NAMA further commented that this also applies to categories such as VOP, SC, M and HZO, SC, and L. (*Id.*)

In response to the October 2023 NOPR, AHRI and Hoshizaki stated that it is unclear how DOE determined that manufacturers are able to reach a 55-percent reduction in energy use in the energy use analysis and DOE should clarify how this reduction can be achieved. (AHRI, No. 81 at p. 9; Hoshizaki No. 76 at p. 4)

In response to the October 2023 NOPR, Hoshizaki requested that DOE review any section showing a reduction of 15 percent or more to verify that these numbers are accurate due to the high requirement that must be met. (Hoshizaki, No. 76 at p. 4)

In response to the October 2023 NOPR, Hillphoenix, Hoshizaki, and NAFEM commented that the design options at the higher efficiency levels are not technologically feasible or cost-effective. (Hillphoenix, No. 77 at p. 1; Hoshizaki, No. 76 at p. 4; NAFEM, No. 83 at pp. 7–8)

As discussed in section IV.C.1.a of this document, after considering the comments received in response to the October 2023 NOPR, DOE has considered revised set of baseline components and design specifications in this final rule. In addition, DOE has also considered changes to design options analyzed beyond baseline based on feedback as discussed in the following sections.

Design Options Not Directly Analyzed

As described in section IV.B.2 of this document, defrost controls and variable-speed fan motors did not meet the criteria for screening them out. However, some design options are not considered in the engineering analysis and are categorized as design options not directly analyzed. As described in sections 5.5.8.7 and 5.5.8.10 of the October 2023 NOPR TSD, variable-speed fan motors and defrost controls, respectively, were considered design options not directly analyzed. In response to the October 2023 NOPR, DOE received several comments regarding these design options.

i. Defrost Controls

As described in section 5.5.8.10 of the October 2023 NOPR TSD, defrost controls were considered a design option not directly analyzed.

In response to the October 2023 NOPR, the CA IOUs recommended that DOE consider adaptive defrost as a design option for CRE because it is a cost-effective option that will reduce the energy consumption of refrigeration units. (CA IOUs, No. 84 at pp. 5–6) The CA IOUs commented that adaptive defrost saves energy by using less resistance heat and reduces the need for refrigeration energy to cool down the unit afterward. (*Id.* at p. 5) The CA IOUs commented that three major CRE

[66] See tables 5.A.2.2 of the 2013 NOPR and 2014 Final Rule TSD available at *www.regulations.gov/document/EERE-2010-BT-STD-0003-0051* and *www.regulations.gov/document/EERE-2010-BT-STD-0003-0102.*

manufacturers offer low-temperature models with adaptive defrost and that DOE's 24-hour test procedure based on ASHRAE 72 should demonstrate the energy-saving benefits of adaptive defrost over standard automatic timed defrost. (*Id.* at pp. 5–6) The CA IOUs commented that although many manufacturers use timers for defrost initiation and air temperature for defrost termination, this method differs from the adaptive defrost method, which reduces the equipment's energy use by decreasing the number of unnecessary defrost cycles. (*Id.* at p.6)

As discussed in chapter 5 of this final rule TSD, defrost cycle control can reduce energy consumption by reducing the frequency of the defrost period. While DOE considered variable defrost as a design option in the June 2022 Preliminary Analysis, DOE tentatively determined not to directly analyze this design option in the October 2023 NOPR. 88 FR 70196, 70232. Full defrost cycle control would involve a method of detecting frost buildup, which can be accomplished through an optical sensor or sensing the air temperature differential across the evaporator coil, and initiating defrost only as often as required. However, DOE understands that there is uncertainty for both of these methods due to potential fouling of the coil with dust and other surface contaminants, which becomes more of an issue as cases age. If the sensor driving the adaptive defrost malfunctions, the resulting freezing of the coils is difficult to reverse. Therefore, due to the current uncertainty and lack of test data, DOE maintained the same approach and did not consider variable approach as a design option in this final rule. See chapter 5 of the final rule TSD for more information.

ii. Variable Speed Fan Motors

As described in chapter 5, section 5.5.8.7 of the October 2023 NOPR TSD, variable-speed fan motors were considered a design option not directly analyzed.

In response to the October 2023 NOPR, the CA IOUs recommended that DOE consider variable-speed condenser fan controls as a cost-effective technology option for self-contained equipment classes. (CA IOUs, No. 84 at p. 5) The CA IOUs commented that variable-speed condenser fan controls, like variable-speed compressors, can modulate capacity under partial refrigeration load during compressor operations. (*Id.*) The CA IOUs commented also that while variable-speed condenser fans may not provide the same energy savings as variable-speed compressors, they are much less expensive, and DOE has considered variable-speed condenser fan control a viable and cost-effective technology option for walk-in coolers and freezers (''WICFs.'') (*Id.*) The CA IOUs stated that the energy savings and cost effectiveness of variable-speed condenser fan control should be comparable between WICFs and CRE. (*Id.*) The CA IOUs additionally commented that variable-speed condenser fan controls are not applicable for remote condensed equipment classes because the rack compressor systems are not covered products. (*Id.*)

With respect to the comment from the CA IOUs, DOE notes that, in a Final Rule amending energy conservation standards for WICFs, variable-speed condenser fans for WICF dedicated condensing units were considered only for those dedicated condensing units located outdoors, in which the fan speed is reduced during cool outdoor conditions when less airflow is needed to cool the condensing refrigerant. See chapter 5 of the WICF Final Rule TSD for more details.[67] The technology would not achieve similar savings for self-contained systems located indoors, where the fan speed is set appropriate for the relatively constant difference in temperature between the condensing refrigerant and the ambient air. For this reason, DOE has not considered variable-speed condenser fans as a design option to improve the efficiency of CRE in this final rule.

Design Options Directly Analyzed

DOE received several comments stating that directly analyzed design options in the October 2023 NOPR were already in use for baseline equipment.

Hoshizaki, Hillphoenix, AHRI, NAFEM, SCC, Kirby, and an individual commenter expressed concern that many of the technologies presented in the October 2023 NOPR analysis have already been implemented in CRE to meet the 2017 regulations. (Hoshizaki, No. 76 at p. 3; Hillphoenix, No. 77 at pp. 1, 11; AHRI, No. 81 at pp. 4–5; SCC, No. 74 at p. 2; Kirby, No. 66 at pp. 1–2; Individual Commenter, No. 70 at p.1) Kirby, Zero Zone, NAMA, and an individual commenter stated that DOE has overestimated the achievable efficiency levels in the proposed rule because many of the efficiency options are already in use. (Kirby, No. 66 at pp. 1–2; Zero Zone, No. 75 at pp. 3, 4; NAMA, No. 85 at p. 5; Individual Commenter, No. 70 at p.1) NAMA commented that DOE is taking additional credit for energy efficiency by adding certain technologies (*i.e.,* LED lighting, brushless DC evaporator fan motor, high-performance door, and brushless DC condenser fan motor) beyond the baseline to justify the proposed efficiency levels, essentially doubling the energy efficiency benefits from technologies already in use and the future design options in the October 2023 NOPR TSD. (NAMA, No. 85 at p. 6) NAMA stated that following the removal of the design options that are not technically feasible or were accomplished many years ago, it becomes clear that the actual energy savings from the remaining items might result in a baseline energy reduction of 5–10 percent, which is a significant deviation from the 41 percent estimated by DOE. (*Id.* at p. 9)

Zero Zone commented that its large self-contained propane display freezers and coolers (*e.g.,* VCT–SC–L, VCT–SC–M), which already include propane fixed-speed compressors, ECM evaporator and condenser fan motors, triple-pane high-efficiency doors with no glass heat, and 2.5-inch insulated panels and LED lights are able to meet current DOE energy levels, and the addition of variable-speed motors and motions sensors are unlikely to provide enough savings to meet the proposed energy levels. (Zero Zone, No. 75 at p. 4)

Hoshizaki added that technologies including fan controls, improved fan motors, improved glass doors, and occupancy sensors are already in use and therefore the ensuing review cannot be economically justified. (Hoshizaki, No. 76 at p. 3) SCC commented that ''enhanced'' coils are already in place and designed to reduce charge for A3 flammable refrigerants. (SCC, No. 74 at pp. 1–2) AHRI commented that technologies including the use of LED lighting, R–290 for self-contained units, and ECM evaporator fan motors are already in use. (AHRI, No. 81 at pp. 4–5) During the November 2023 Public Meeting, AHRI additionally stated that its members are already using adaptive defrost systems, increased insulation thickness, and improved evaporator coil design. (November 2023 Public Meeting Transcript, No. 64 at p. 19) NAFEM commented that CRE manufacturers already use most of the screened-in technologies listed in the October 2023 NOPR, including: insulation; lighting; improved transparent doors (low-emissivity coatings, inert gas, and additional panes); compressors (improved efficiency, alternative refrigerants, and variable-speed

[67] See section 5.7.2.8, Variable-Speed Condenser Fan Control, at *www.regulations.gov/document/EERE-2017-BT-STD-0009-0093* at pp. 5–60.

compressors); evaporators (increased surface area and evaporator coil design); condensers (increased surface area and tube and fin enhancements); fans (fan motors controls); and ''other'' (defrost systems and liquid suction heat exchangers). (NAFEM, No. 83 at p. 3)

NAFEM and NAMA requested that DOE revise the October 2023 NOPR and accompanying NOPR TSD to address NAFEM and NAMA's comments. (NAFEM, No. 83 at p. 26; NAMA, No. 85 at pp. 19–20)

NAFEM commented that the proposed standards in the October 2023 NOPR would substantially increase manufacturing costs because many of the design options analyzed in the October 2023 NOPR are already in place, and other screened-in technologies have substantial shortcomings, leaving the CRE industry no other available and feasible technologies to meet the standards. (*Id.* at p. 18) Therefore, NAFEM commented that its members will turn to proposed technologies such as variable-speed compressors, which have shown promise in certain applications to reduce energy consumption but have not proven to be economically a viable option for many CRE within the timeline of this rulemaking. (*Id.*)

In response to commenters requesting DOE review the design options assumed in the baseline, DOE reviewed the design options identified in this final rule and determined that ECM evaporator and condenser fan motors in most equipment classes and LED lighting in all equipment classes are typically present in baseline units. Therefore, for the final rule analysis DOE assumed that ECM evaporator and condenser fan motors would be used in baseline equipment in most classes and LED lighting would be used in baseline equipment in all classes and thus could not be considered as energy-saving design options for those classes. DOE's reverse-engineering showed that many units at baseline do not use the design options that the above commenters have claimed are already widely in use (*i.e.,* occupancy sensors, variable-speed compressors, and improved transparent doors). DOE has also observed a range of cabinet wall thicknesses in its reverse engineering analysis. Therefore, DOE has determined that the baseline assumptions in this final rule are representative of baseline CRE currently available in the market, and DOE disagrees that energy savings are being double counted in this final rule. See appendix 5A of the final rule TSD for a full list of baseline components analyzed for each equipment class.

AHRI resubmitted data collected from AHRI, NAFEM, and NAMA in response to the June 2022 Preliminary Analysis, which showed that data used for the analysis was outdated and did not align with current market conditions. (AHRI, No. 81 at pp. 3–4) NAFEM commented that many of the proposed technologies are widely used in VCS equipment. (NAFEM, No. 83 at p. 5) AHRI commented that, after reviewing the June 2022 Preliminary TSD, AHRI, NAFEM, and NAMA conducted a survey of members that manufacture CRE in an effort to share with DOE up-to-date information (''Trade Associations Survey''). (AHRI, No. 81 at p. 3) AHRI submitted survey results in an attachment to its comment detailing that the June 2022 Preliminary TSD design options include many that are currently in use to meet existing standards and others that raise concerns regarding applicability, as well as some design options that manufacturers could support. (*Id.*) AHRI commented that, according to the Trade Associations Survey, the efficiency levels proposed by DOE raise questions and concerns and there is uncertainty that implementing anticipated design options would result in energy efficiency improvements. (*Id.* at pp. 3–4)

Continental commented that the design options included in DOE's analysis are not technically feasible and/or economically justified to achieve the proposed reductions in energy use for all product configurations within each covered equipment type in the October 2023 NOPR. (Continental, No. 86 at pp. 3–6) Continental commented that development of its new line of R–290 products required entire redesign of all cooling systems—including new compressors, evaporator coils, and condenser coils—along with new electrical components for compatibility with flammable refrigerants. (*Id.* at p. 3)

In response to the August 2024 NODA, NAMA commented that the NODA design options for VCT.SC.M, VOP.SC.M, and HZO.SC.L contain engineering solutions that have been part of the production of CRE products for more than 10 years. (NAMA, No. 112 at p. 4) NAMA commented also that DOE has double counted the energy savings from the design options in the baseline so the improvement in energy efficiency based on the August 2024 NODA and October 2023 NOPR are much greater than reality. (*Id.*)

DOE acknowledges that the Trade Associations Survey may indicate the use by some manufacturers of certain technologies proposed as design options in the October 2023 NOPR. However, the survey results do not provide information regarding the efficiency levels achieved by the specific equipment using those technologies, so the results do not indicate which technologies are used at baseline and which technologies are used in equipment that exceed the baseline. For this reason, DOE cannot assume based on the survey results that all technologies mentioned are already in use at baseline. For the survey results to be useful for DOE's analysis, the survey would need to provide information of the correlation of the design options with efficiency levels.

In response to the comment from Continental on technological feasibility, DOE notes that all technology options considered in this final rule were initially determined to pass the screening criteria, which includes technological feasibility. While not all technology options that pass the screening criteria are directly analyzed in this final rule, the technology options are all considered technologically feasible based on DOE's screening criteria. In addition, DOE does not remove design options based on cost-effectiveness. Rather, DOE analyzes the cost-effectiveness through the cost-efficiency curves (presented in chapter 5 of the final rule TSD) and other analyses presented in section IV.F of this document.

In response to the October 2023 NOPR, DOE also received more extensive comments on specific design options analyzed in the October 2023 NOPR, including night curtains, variable-speed compressors, occupancy sensors, and door design changes. These comments are discussed in the following paragraphs.

iii. Night Curtains

In the October 2023 NOPR and the August 2024 NODA,[68] DOE considered night curtains as a design option in its analyses. 88 FR 70196, 70224.

In response to the October 2023 NOPR, NAFEM commented that its members report substantial customer resistance to night curtains because of the difficulty for customers to access items behind the curtains, especially shoppers who are not using a basket or cart and are carrying multiple items. (NAFEM, No. 83 at pp. 6–7) Hussmann commented DOE's assumption that night curtains and lighting controls will lead to new energy savings for VOP.RC.M and SVO.RC.M equipment classes is flawed. (Hussmann, No. 80 at pp. 5–6) Hussmann also stated that

[68] *See www.regulations.gov/document/EERE-2017-BT-STD-0007-0090.*

these equipment options have been available to order on Hussmann's merchandisers for nearly 20 years in the case of night curtains and 15 years for lighting controls, and if retailers are not ordering these options now, they do not want them and will not use them in their stores, even if they are automatically applied to the merchandisers they purchase. (*Id.*) Hillphoenix commented that it did not implement night curtains on CRE to meet the 2017 energy requirements and it has reduced energy consumption using other technology design options. (Hillphoenix, No. 77 at p. 5) Hillphoenix also stated that night curtains should not be considered a preferred option to achieve lower energy consumption. (*Id.*)

In response to the comment from NAFEM, DOE notes that the CRE test procedure accounts for 6 hours of night curtain use per 24-hour period, and, in this final rule, DOE analyzes energy savings based on the DOE test procedure. DOE assumes that night curtains would not be in use when customers are in the store, and therefore, they would not need to access items behind the curtain as described in NAFEM's comment.

In response to the comment from Hillphoenix, DOE notes that if night curtains were not implemented to meet the 2017 energy conservation standards, then it is appropriate for DOE to consider this design option as a potential pathway to decrease energy use.

In response to the comment from Hussmann, DOE notes that, as stated by Hillphoenix, not all manufacturers have implemented this design option (other than as an optional feature), and it is therefore still appropriate to consider as a design option to improve efficiency.

In response to the August 2024 NODA, Zero Zone commented that the majority of grocers do not specify night curtains, and that the life span is only 1–3 years, making pay back on energy savings unlikely. (Zero Zone, No. 114 at p. 2)

Hillphoenix commented that while night curtains promote energy reduction, they also negatively impact the refrigeration system by causing short cycling of the compressor, refrigerant oil logging, or in the worst case, liquid slugging of the compressor. (Hillphoenix, No. 110 at p. 10) Hillphoenix commented that this increases stress on start components of fixed speed compressor units on self-contained models. (*Id.*)

DOE responds that neither the October 2023 NOPR nor the August 2024 NODA comments provide clear justification for screening out night curtains. Specifically, Hussmann indicates that they have been available for use for 20 years, despite potential for short cycling. Although Hussmann claims that savings estimates are flawed, they have not provided explanation or data that would allow DOE to adjust its analysis of night curtain savings. DOE notes that, in response to Zero Zone's comment regarding night curtain life span, the life-cycle cost and payback period analysis has considered replacement costs for night curtains prior to the equipment end of life, see section IV.F.5 of this document for details.

iv. Variable-Speed Compressors

In the October 2023 NOPR, DOE used performance data for variable-speed R–290 compressors currently available on the market in DOE's engineering spreadsheet to estimate the performance impacts of transitioning to a variable-speed compressor. 88 FR 70196, 70219. DOE assumed that variable-speed compressors would operate at the minimum speed under steady-state operation, and also assumed that the fan motors would operate during the compressor run time (*i.e.,* the fan motor operating duration would likely increase compared to a single-speed compressor). *Id.* Overall, DOE estimated a 0.5–25 percent energy consumption reduction when implementing variable-speed compressors, with savings varying depending on equipment class. *Id.*

In response to the October 2023 NOPR, Zero Zone stated that DOE makes a very specific assumption on the energy efficiency gains of a variable-speed motor, but according to its supplier, it is very difficult to predict the efficiency gains of a variable-speed motor. (Zero Zone, No. 75 at p. 4) Zero Zone added that the improvement depends on the duty cycle of the compressor, which depends on the size of the fixed-speed compressor compared to the size of the variable-speed compressor. (*Id.*) Zero Zone commented that it doubts the efficiency gains listed by DOE, and Zero Zone requested that DOE remove variable-speed motors from the analysis until data can be gathered and reviewed. (*Id.*)

NAMA stated that a change to a VSC would not save 13.4 percent of the baseline. (NAMA, No. 85 at pp. 11–12) NAMA added that variable-speed compressors would save 0.1 kWh/day, in comparison to DOE's estimate of 0.625 kWh/day for the VCT.SC.M equipment class. (*Id.* at p. 14) NAMA further stated that for many models of smaller bottle coolers (< 30 ft^3), these variable-speed compressor motors are not available for units using R–290 refrigerant. (*Id.* at p. 23) NAMA added that the October 2023 NOPR energy savings of 0.625 kWh/day is five times more savings than NAMA has seen in its experiments with variable-speed compressors. (*Id.*) NAMA stated that this may be the improvement of the part in a bench test, but this is not the result in the actual unit tested to the DOE test procedure. (*Id.*) NAMA stated also a discrepancy between the VSC energy savings found in the June 2022 Preliminary Analysis and the October 2023 NOPR. (*Id.*)

Hoshizaki commented that VSCs will require design controls to perfect the cycles for optimum energy use, adding time for staff to prepare the compressors and fans for the control features to make sure each unit has its own controls based on the defrost and run time. (Hoshizaki, No. 76 at p. 5) Hoshizaki commented that VSCs and fan motor lifetimes may be less than current components. (*Id.*) Hoshizaki stated that the warranties for VSCs may be closer to 3–5 years compared to the 5–7-year warranties for compressors that is currently common in the market, due to increased repairs if manufacturers are forced to transition to VSCs without adequate time for full-life testing at many ambient and humidity conditions. (*Id.*) Hoshizaki added that, if the defrost settings are incorrect, freeze-ups may occur due to true-to-life door-opening conditions. (*Id.*)

Hillphoenix commented that VSC technology can have an approximately 15-percent minimum efficiency improvement to the overall CRE product's energy due to fewer starts and stops and continuous compressor speed control to match the load requirement. (Hillphoenix, No. 77 at p. 8) Hillphoenix commented that Copeland reported that the variable-speed compressor motor itself only adds approximately 5 percent efficiency gain due to compressor motor enhancements, whereas the calculated compressor energy reduction from DOE's engineering spreadsheet shows a 44.9-percent energy savings when comparing an R–290 reciprocating with an R–290 variable-speed compressor. (*Id.*) Hillphoenix stated that the energy values DOE used to represent the impact of changing refrigerants to R–290 with VSCs are broad assumptions and are not reflective of actual tested values. (*Id.*) Hillphoenix commented that to estimate the performance impacts of transitioning to a variable-speed compressor, DOE should use values established by testing physical units. (*Id.*)

In support of the August 2024 NODA, DOE reviewed variable-speed compressors on the market at the time of the analysis, updated its database of variable-speed compressor performance, and updated its variable-speed compressor analysis. 89 FR 68788, 68793

Specifically, DOE observed that some manufacturers have updated their VSC coefficients since publication of the October 2023 NOPR. Due to these updates, and to maintain a methodology consistent with that used for single-speed compressors, DOE has updated results in this final rule based on the average efficiency of the market for variable-speed compressors if three or more compressor brands have available variable-speed compressors at the appropriate capacity, and selecting the lower-efficiency compressor if only two compressor brands are available at a specific cooling capacity. DOE also adjusted the calculation for the evaporator and condenser temperatures when operating at part load using variable-speed compressors. DOE used in the analysis an evaporator temperature 3 °F higher than for single-speed compressor operation, and a condenser temperature 5 °F lower to represent the benefit of operation at part load. This simplified the analysis as compared to the approach taken in the October 2023 NOPR, in which DOE based the evaporator and condenser temperature differences on a logarithmic mean temperature difference (''LMTD'') calculation that was adjusted based on the change in duty cycle when switching from single- speed to variable-speed compressors.[69] Based on these updates, in the August 2024 NODA analysis, DOE estimated that the energy consumption reduction from implementing variable-speed R–290 compressors would range from approximately 2.5 to 19.2 percent, depending on the equipment class and the representative capacity. Comparatively, in the October 2023 NOPR, DOE estimated approximately 0.5 to 25 percent energy consumption reduction when implementing variable-speed R–290 compressors.[70] In the March 2014 Final Rule, precedent was established for an update to the analysis approach for compressors, where DOE updated the single-speed compressor assumptions in response to commenter feedback on the NOPR. See 79 FR 17725, 17760. For further details of the calculations, see the August 2024 NODA engineering spreadsheet.[71] DOE notes that its updated approach provides a conservative estimate of energy use reduction associated with conversion to variable-speed R–290 compressors, due to use of the average or lower performance levels of available compressor models, and no consideration of potential additional savings associated with fan speed reductions.

In addition to updating the variable-speed compressor performance analysis, DOE updated the baseline assumption costs to include electronic controls at the baseline for all equipment classes in response to commenter feedback and based on observation of the CRE units torn down by DOE. While there would be development costs to program controls for variable-speed operation, there would be insignificant control hardware costs (other than the compressor motor inverter, which was included in the cost analysis), since baseline models would already have electronic controls. DOE notes that the development costs to optimize variable-speed compressors are accounted for the MIA, see section IV.J.2.c of this document for additional details on DOE's conversion cost methodology and section V.B.2.a of this document for the estimated conversion costs at each analyzed TSL. See section IV.F.5 for discussion on maintenance and repair costs.

In response to the comment from Hillphoenix, DOE reiterates that DOE estimated that the range of energy use reduction associated with implementing variable-speed compressors was between approximately 0.5 and 25 percent in the October 2023 NOPR. This was reduced to a range of up to 19.2 percent in the August 2024 NODA analysis. DOE is not aware of any equipment class where the October 2023 NOPR engineering spreadsheet showed a 44.9 percent reduction in energy use attributed to implementing variable-speed R–290 compressors.

In response to the August 2024 NODA, Continental continued to oppose the inclusion of VSCs as a design option to be incorporated over the next 3 years given their complexity and increased costs. (Continental, No. 107 at pp. 2–3) Continental argued that VSCs are currently only used in specialty configurations, and more time is needed to determine long-term savings as well as train staff on repairs. (*Id.*) Continental commented that they have extended product warranties in recent years, covering parts and service for 5, 6 or 7 years from first use, which presents exposure to any risks from premature introduction of new features or components that have not been fully vetted. (Continental, No. 107 at p. 3)

In response, DOE notes that it is adopting a 4-year compliance period in this final rule, which provides an additional year for manufacturers to redesign CRE models to meet new and amended standards as compared to the October 2023 NOPR. Additionally, DOE notes that it considers the development costs associated with implementing variable-speed technology in its MIA (see section IV.J.2.c of this document for additional information on DOE's conversion cost methodology). See section IV.F.5 for discussion on maintenance and repair costs.

Hillphoenix commented that they agree with the temperature reduction values when applying variable-speed compressors, but does not agree with the max energy reduction of 19.2 percent, and stated that test data from the VCS.SC.L class reflects approximately 13 percent max energy savings. (Hillphoenix, No. 110 at p. 4,) Since variable speed compressor technology is new, test data is not available for VCS.SC.M models, but based on industry knowledge Hillphoenix estimated the savings will be similar to the low temperature class. (*Id.* at pp. 4–5)

DOE notes that 19.2 percent energy use reduction associated with the variable-speed compressor design option is the maximum energy savings of all the analyzed classes and that for the VCS.SC.L and VCS.SC.M classes, the analyzed energy savings are 15.7 percent and 10.6 percent, respectively, which aligns well with Hillphoenix's statement of expectations for the VCS.SC.L and VCS.SC.M classes.

Delfield commented they have tested their own units and found that the energy consumption of CRE with a variable-speed compressor compared to a well-designed system with a fixed-speed compressor is essentially the same because the efficiency gained by using a variable-speed compressor is offset by increased runtime of fans and heaters. (Delfield, No. 99 at p. 2) Delfield further commented that the cost of a variable-speed compressor and the required inverter is double the cost of an efficient fixed-speed compressor. (*Id.*) Delfield requested that DOE remove this technology from the analysis. (*Id.*)

In response, DOE notes that its analysis for variable-speed technology did consider increased run time of fans, but did not consider additional improvement that could be achieved

[69] See the calculations tab of the engineering spreadsheet at *www.regulations.gov/document/EERE-2017-BT-STD-0007-0055.*

[70] See section 5.5.3.1 of the October 2023 NOPR TSD at *www.regulations.gov/document/EERE-2017-BT-STD-0007-0051.*

[71] *See www.regulations.gov/document/EERE-2017-BT-STD-0007-0091.*

through the use of fan speed reduction during compressor part-load operation. Further, Delfield's mention of heater runtime increase suggests that they control the antisweat heaters to run when the compressor is energized and did not adjust antisweat heater wattage during variable-speed compressor testing to arrive at the same heater runtime and therefore the same antisweat heater energy use as without a variable-speed compressor. Since a variable-speed compressor runs longer than a single-speed compressor, if Delfield's antisweat heater is energized whenever the compressor is energized then it runs longer than it would otherwise with a single-speed compressor. Therefore, Delfield claims its testing using a variable-speed compressor shows little difference in energy use despite the energy savings from the variable-speed compressor because the antisweat heater was not adjusted to have the same runtime and energy use as without a variable-speed compressor. It is not clear why heater energy use should be increased for a variable-speed compressor, so it is not clear that their testing represents an optimized variable-speed system. DOE notes that Delfield's statement regarding variable-speed compressor costs are consistent with DOE's estimates. DOE concludes that insufficient evidence has been provided to justify removing variable speed compressor technology from the analysis.

v. Occupancy Sensors

In response to the October 2023 NOPR, Zero Zone, Hussmann, and NAFEM commented that occupancy sensors have been available for purchase and use for more than 10 years and were initially used by customers. (Zero Zone, No. 75 at p. 4; Hussmann, No. 80 at pp. 5–6; NAFEM, No. 83 at p. 6) However, Zero Zone, Hussmann, NAFEM, Hillphoenix, and NAMA commented that food retail establishments have stopped purchasing occupancy sensors on units or they turn off the motion sensors because their customers may think the unit is malfunctioning, which has a negative impact on sales and the utility of the unit. (Zero Zone, No. 75 at p. 4; Hussmann, No. 80 at pp. 5–6; NAFEM, No. 83 at p. 6; Hillphoenix, No. 77 at p. 6; NAMA, No. 85 at p. 24) NAMA also stated that occupancy sensors are more expensive and do not save as much energy as analyzed in the October 2023 NOPR and that with newer LED lighting technology available, occupancy sensors may become outdated. (NAMA, No. 85 at pp. 12, 24) Hussmann added that if a store is closed during nighttime hours, it is a widely used practice to separately wire all the display case lighting to dedicated electrical circuits that can be turned off on a fixed schedule, which is a more cost-effective way of saving lighting energy than individual lighting controllers on each display case. (Hussmann, No. 80 at p. 5)

In response to the August 2024 NODA, Zero Zone commented that the majority of their customers do not request motion sensors, and some removed it from their specifications, as having lights off indicates to customers that the case is broken. (Zero Zone, No. 114 at p. 2) Continental disagreed with DOE's statement that 75 percent of products would benefit from the use of occupancy sensors, and argued that this is not a viable feature due to mis-application which would result in service issues, and requested the removal of the design option. (Continental, No. 107 at p. 2)

ASAP *et al.* commented that while they understand the reduced savings from the occupancy sensors, they state that manufacturers will be able to utilize occupancy sensors to meet any amended standards. (ASAP *et al.,* No. 106 at p. 3) ASAP *et al.* added that CRE test procedure does not include any comparable assumption about de-activation (*i.e.,* the test procedure gives full credit to occupancy sensors). (*Id.*)

In response to comments about occupancy sensors either not being desired by certain end users, or certain end users using their own on-site control system, DOE has revised the energy use analysis for occupancy sensors to consider that they would not be used by all end-use customers. Specifically, the revised energy use analysis assumes only 75 percent of end users would use occupancy sensors, as discussed in section IV.E of this document. However, although DOE has considered partial non-use of occupancy sensors in the energy use analysis, it has not revised the engineering assumptions related to the occupancy sensors in this final rule because the engineering analysis is based on the DOE test procedure, which does not consider potential non-use of the technology. The DOE test procedure is not intended to anticipate how end users may modify the unit in the field, including de-activation of occupancy sensors. Further, DOE did not revise its MPCs for occupancy sensors, as suggested by NAMA, because DOE did not receive any data from commenters to suggest an alternative MPC would be more representative. Also, DOE notes that it does not expect manufacturers would need to incorporate occupancy sensors with dimming capability to meet the adopted TSL (*i.e.,* TSL 3).

vi. Door Design Changes

In response to the October 2023 NOPR, Hillphoenix commented that vacuum-insulated glass (''VIG'') is not applicable for low-temperature applications due to the glass bending in the extreme temperature difference. (Hillphoenix, No. 77 at p. 7) Hillphoenix commented that, more importantly, all suppliers of VIG stopped production for CRE products due to the low demand and refused to supply the market. (*Id.*) Hillphoenix stated that DOE referenced information in the October 2023 NOPR TSD that is no longer valid and that Anthony International discontinued VIG in 2019.[72] (*Id.*)

NAMA expressed concern with the safety hazard presented by the additional weight from increased panes in doors together with noble gas insulation, which could make the product excessively top heavy. (NAMA, No. 85 at pp. 24–25) NAMA further commented that the June 2022 Preliminary Analysis results for door design options are no longer relevant. (*Id.* at p. 25)

SCC commented that VIG would eliminate any curved glass models as this technology simply does not exist except in flat structural glass. (SCC, No. 74 at p. 2) SCC commented that, on SOC models, the glass is lifted and held by gas cylinders for ease of loading product, not a swing door like VCT units, and the extra weight and constant opening would severely degrade the reliability of the equipment and may constitute a safety issue for merchandisers. (*Id.*)

Hillphoenix commented that medium-temperature doors are currently manufactured with double-pane glass that is filled with argon gas and low-temperature doors are currently manufactured with triple-pane glass that is filled with argon gas. (Hillphoenix, No. 77, p. 6) Hillphoenix stated that the cost of krypton gas is more than double the cost of argon gas and there is a limited supply of krypton gas available to the market. (*Id.*) Hillphoenix commented that triple-pane glass on medium-temperature CRE would increase cost for a minimal efficiency gain. (*Id.* at p. 7)

In response to the comments regarding increased cost, DOE does not screen out a technology based on its cost-effectiveness. In response to

[72] *See www.buildinggreen.com/product-review/saving-energy-supermarkets-vacuum-insulated-glass.*

comments about weight concerns, DOE notes that low-temperature freezers already primarily use triple-pane glass packs, which demonstrates the ability of CRE to use this technology. In response to comments with concerns about VIG supply and application in low-temperature applications, DOE notes that there are examples of manufacturers that continue to offer VIG doors on commercial freezers.[73] And in response to comments regarding the cost of krypton gas, DOE has revised its MPC for this design option based on commenter feedback. As discussed in section V.C.1 of this document, DOE does not expect manufacturers would need to implement VIG doors or triple-pane glass doors with krypton fill to meet the adopted TSL. In response to the comment from SCC about VIG not being suitable for curved glass, DOE notes that the analyzed SOC classes in this final rule only considered multiple-glass-layer or VIG design options for the flat glass rear doors and not the non-door glass area. Furthermore, it is DOE's understanding that the upward-lifting front glass mentioned by SCC for SOC models can be curved, but because DOE's analysis does not consider an increase in glass layers for the non-door glass area, SCC's comment about the impact on durability of the gas cylinders used to support the curved glass when open is not relevant. Also, DOE notes that it does not expect manufacturers would need to incorporate vacuum-insulated glass doors to meet the adopted TSL (*i.e.,* TSL 3).

NAMA commented that the savings from increased door panes together with noble gas insulation are more likely to be 0.3–0.6 kWh/day, rather than the projected 1.270 kWh/day. (NAMA, No. 85 at p. 25)

In response to the comment from NAMA, it appears that NAMA is referencing the VCT.SC.M results provided in the June 2022 Preliminary Analysis, for which the ''high performance door'' design option for VCT.SC.M saved 1.270 kWh/day compared to the previous design option step;[74] however, section 5.8 of the October 2023 NOPR TSD presents savings based on the revised analysis, which result in less than 0.1 kWh/day of savings. Therefore, DOE has revised the analysis addressed by NAMA's comment in the August 2024 NODA and in this final rule, resulting in comparable results to NAMA's comment.

c. Equipment Classes With Unique Energy Use Characteristics

In the October 2023 NOPR, DOE proposed additional energy use allowances for certain equipment classes having unique features. DOE also proposed definitions to clarify which features are eligible (see section IV.A.1.b for more description regarding the definitions). 88 FR 70196, 70230–70231. DOE determined potential energy use allowances for these features based on CCD data, information from commenters, and manufacturer interviews, and DOE's directly analyzed units showing an energy use difference between certain types of CRE. *Id.* at 88 FR 70230. As proposed in the October 2023 NOPR, these equipment have the specified performance-related features and different maximum energy use to represent separate additional equipment classes.

In the October 2023 NOPR, DOE tentatively developed multipliers for pass-through, sliding, roll-in doors, and roll-through features. *Id.* at 88 FR 70231. See table IV.13 for additional details on what was proposed in the October 2023 NOPR.

Table IV.13 Description of Equipment Class Multipliers for Unique Door Characteristics in the October 2023 NOPR

Door Type	Applicable Equipment Classes	Equipment Type Coefficient	Equipment Class Multiplier
Pass-through	VCT.RC.M; VCT.SC.M; VCT.SC.L;, VCS.SC.M; VCS.SC.L	PT	1.04
Sliding	VCT.RC.M; VCT.SC.M	SD	1.07
Pass-through and Sliding	VCT.RC.M; VCT.SC.M	SDPT	1.11
Roll-in	VCT.RC.M; VCT.SC.M;, VCS.SC.M; VCS.SC.L	RI	1.05
Roll-through	VCT.RC.M; VCT.SC.M;, VCS.SC.M; VCS.SC.L	RT	1.09

In the October 2023 NOPR, DOE additionally tentatively developed multipliers for forced-air evaporators. *Id.* at 88 FR 70212. Based on CCD data, information from commenters and manufacturer interviews, and DOE's directly analyzed units showing an energy use difference between certain types of CRE, DOE tentatively

[73] See *valprorefrigeration.com/glass-door-merchandisers/glass-door-freezer-merchandisers/two-swing-glass-door-merchandiser-freezer-vp2f-48hc/*.

[74] See chapter 5, section 5.8 of the June 2022 Preliminary TSD at *www.regulations.gov/document/EERE-2017-BT-STD-0007-0013*.

developed an energy use multiplier for equipment classes that were directly analyzed in the October 2023 NOPR as CRE with a cold-wall evaporator and for which DOE observed models with forced-air evaporators in those equipment classes on the market. *Id.* at 88 FR 70231. DOE tentatively developed this multiplier to account for the additional energy use associated with a forced-air evaporator as compared to a cold-wall evaporator. *Id.* See table IV.14 for additional details of what was proposed in the October 2023 NOPR.

Table IV.14 Description of Equipment Class Multipliers for Unique Refrigeration Systems in the October 2023 NOPR

Refrigeration System	Applicable Equipment Classes	Equipment Type Coefficient	Equipment Class Multiplier
Forced Air	HCS.SC.L	FA	1.2

In response to the October 2023 NOPR, SCC and AHRI commented that they appreciate that DOE is applying the definitions to VCT and VCS equipment classes to allow for more energy for rear-door options. (SCC, No. 74, p. 3; AHRI, No. 81 at pp. 5–6) Due North supported DOE's proposal to separate out the newly introduced VCT.SC.M.PT and VCT.SC.M.SDPT classes from the VCT.SC.M class to address their construction uniqueness and the related increased energy use. (Due North, No. 87 at p. 2)

ITW, the CA IOUs, and Continental supported DOE's proposal to add provisions for non-traditional door designs including sliding, rolling, and pass-through doors; Continental expressed support for the provisions proposed for horizontal closed low-temperature models with forced air evaporators. (ITW, No. 82 at p. 6; CA IOUs, No. 84 at p. 1; Continental, No. 86 at p. 2) Continental commented that these equipment types have differentiating characteristics that impact energy consumption. (Continental, No. 86 at p. 2) The CA IOUs commented that creating separate standards for these designs acknowledges the energy impact of non-traditional door designs on specialty refrigeration equipment. (CA IOUs, No. 84 at p. 1)

SCC, AHRI, Hoshizaki, and Hussmann agreed in principle to the use of an energy use multiplier for certain equipment classes but stated DOE has not allowed enough time for manufacturers to test and validate the multipliers. (SCC, No. 74 at p. 4; AHRI, No. 81 at p. 8; Hoshizaki, No. 76 at p. 3; Hussmann, No. 80 at p. 6) AHRI and Hussmann commented that they require 1 year of testing, and Hoshizaki requested time in the first quarter of 2024 to access its test room and validate the numbers in the October 2023 NOPR. (AHRI, No. 81 at p. 8; Hussmann, No. 80 at p. 6; Hoshizaki, No. 76 at p. 3) ITW also commented that it would like to conduct laboratory evaluations of the new equipment categories and provide DOE with test data to validate the differences in performance for these new categories. (ITW, No. 82 at p. 6) SCC and NEEA and NWPCC commented that they would like to see the data and analysis around how the energy use multipliers have been developed. (SCC, No. 74 at p. 4; NEEA and NWPCC, No. 89 at p. 1) NEEA and NWPCC stated that while they understand DOE's intent for the energy use multipliers, DOE's explanation for how the energy use multipliers were developed is not clear. (NEEA and NWPCC, No. 89 at p. 2) NEEA and NWPCC added that stakeholders cannot provide comment on whether the multipliers are too conservative or too aggressive without knowing what information or data the multipliers are based on and expressed concern that these multipliers are creating an insufficiently justified loophole for less efficient equipment to be manufactured. (*Id.* at p. 2) NAMA commented that it does not understand the concept of using a ''multiplier'' within the CRE rulemaking and the information given in the October 2023 NOPR does not contain enough information for NAMA members to comment on. (NAMA, No. 85 at p. 30)

NEEA and NWPCC stated that ENERGY STAR currently certifies sliding, roll-in, and pass-through units that meet the energy use requirements of their respective equipment classes, which would indicate that there may be no need for an energy multiplier solely based on these door types, as equipment already exists that meets a higher efficiency threshold than DOE's current standard without a separate threshold from their single-door counterparts. (NEEA and NWPCC, No. 89 at p. 2)

Delfield commented that the suggested allowances for most categories of specialty cabinets are not reasonable and that any additional allowances should consider the refrigerated volume of the cabinet rather than a fixed number, as proposed in some of the categories. (Delfield, No. 71 at p. 1) Delfield recommended that DOE implement a 20-percent allowance for pass-throughs, sliding doors, and roll-ins used in VCS.SC.M, VCS.SC.L, VCT.SC.M, and VCT.SC.L equipment classes, as well as an additional 20 percent for roll-throughs and also for pass-throughs with sliding doors . (*Id.*) Delfield added that these low-volume, specialty cabinets have very little impact on national energy consumption and the environment. (*Id.*)

ITW recommended that DOE create an additional category for cabinets with drawers and Delfield recommended an additional category specifically for freezers with drawers. (ITW, No. 82 at pp. 2, 4; Delfield, No. 71 at p. 2) Delfield commented that freezer drawers require additional heater wires and gaskets, which contribute to increased energy consumption and suggested a 20-percent additional allowance for freezers with drawers to be classified as VCS.SC.L.DRW. (Delfield, No. 71 at p. 2) ITW commented that its test data shows that the energy use is measurably greater in equipment with drawers versus equipment with doors, thus meriting DOE's creation of a separate category for this type of equipment. (ITW, No. 82 at p. 2) ITW commented that it had conducted testing on the same cabinet with both drawer and door configuration, and test results showed that there is a 27-percent higher energy consumption on the drawer freezer compared to same- size door freezer. (*Id.* at p. 4)

In the August 2024 NODA, DOE presented revised analysis results for a range of potential efficiency levels. 89 FR 68788. 68802–68825. As part the August 2024 NODA, DOE applied a simplified multiplier approach to the eligible equipment classes discussed in the October 2023 NOPR, evaluating the use of a single multiplier for all evaluated equipment classes and feature groupings, including pass-through, sliding door, sliding-door pass-through, roll-in, roll-through, forced-air evaporator, and drawers. *Id.* at 89 FR

68794. To select a single multiplier representative of the range of features analyzed, DOE used an equipment class shipment-weighted average of the eligible equipment class unweighted average multiplier values based on the features applicable for each class. *Id.* The result of this single multiplier analysis yielded a multiplier of 1.07. *Id.* DOE applied this multiplier to the representative energy use at each efficiency level for each eligible class and presented the resulting energy use equations in the August 2024 NODA. *Id.*

In response to the August 2024 NODA, ITW commented that it supports the concept of a ''simplified multiplier'' for eligible equipment classes and feature groupings, including pass-through, sliding door, sliding-door pass-through, roll-in, roll-through and drawers. (ITW, No. 111, pp. 1–2) ITW commented that they do not support DOE's proposed 1.07 multiplier, because their analysis indicates a multiplier value significantly higher associated with some features and recommends a compromise for the ''simplified multiplier'' of 1.11 to 1.15 rather than 1.07. (*Id.* at p. 2) ITW's analysis yielded a multiplier of 1.07 for pass-through classes and sliding classes, 1.11 for pass-through and sliding classes, 1.06 for roll-in classes, 1.14 for roll-through classes, and 1.27 for drawer classes. *Id.*

ITW commented that they appreciate DOE's understanding that ancillary losses are significantly higher in equipment with drawers versus equipment with doors to merit their inclusion in the grouping of CRE with features that affect energy use. (*Id.*)

Hillphoenix commented that the forced-air evaporator configuration proposed in the October 2023 NOPR only applied to equipment class HCS.SC.L. (Hillphoenix, No. 110 at p. 6) Hillphoenix commented also that in the October 2023 NOPR engineering analysis spreadsheet for HCT.SC.M, L, and I product classes, there was no energy included for the evaporator fans motors or anti-sweat heat, which assumes that all products in this class are considered by DOE to utilize cold wall evaporators. (*Id.*) Hillphoenix stated that this assumption does not accurately reflect the larger units in this class which utilize evaporators and fans. (*Id.*) Hillphoenix commented that the forced air evaporator configuration needs to be included in the HCT.SC class, and that this class must include evaporator fans and anti-sweat energy. (*Id*). Hillphoenix stated its belief that HCT.RC, HCT.SC, HZO.RC, HZO.SC with glass sides are not suitable for cold wall evaporators because the refrigerant piping cannot be installed in the glass which surrounds the product. (*Id.*)

Delfield supported the need for new classifications on specialty cabinets, however, they found that the suggested allowances for most of these categories are not reasonable. (Delfield, No. 99 at p. 2) Delfield commented that any additional allowances for these categories should consider the refrigerated volume of the cabinet rather than a fixed number as proposed in some of the categories. (*Id.*) Delfield disagreed that a single use multiplier can be used effectively on pass-through doors, sliding doors and roll-ins since these categories have different challenges with widely different energy consumptions. (*Id.*) Delfield recommend either leaving these categories at DOE 2017 levels or moving forward with a 20 percent allowance for pass-through doors, sliding doors and roll-ins versus VCS.SC.M, VCS.SC.L, VCT.SC.M and VCT.SC.L classifications and an additional 20 percent for roll-throughs and pass-throughs with sliding doors. (*Id.*)

Delfield also suggested that DOE add an additional classification for freezers with drawers stating they require additional heater wires and gaskets which contribute to increased energy consumption. (*Id.* at p. 3) Delfield ultimately recommended that DOE stays at 2017 DOE levels for freezers with drawers. (*Id.*)

In response to ITW's and Delfield's comments requesting an alternative single multiplier, DOE notes that neither ITW, Delfield, nor any other commenter, provided data to support a multiplier different from the multiplier presented in the August 2024 NODA. DOE conducted a review of the data that supported the August 2024 NODA multiplier and has determined that it continues to be representative of the eligible features included in the August 2024 NODA and this final rule.

In response to Hillphoenix's comment, DOE notes that it is not aware of any models certified to DOE's CCD in the HCT.SC class which use forced-air evaporators, including the HCT.SC models Hillphoenix has certified to DOE.[75] Further, the HCT.SC and HCT.RC models that Hillphoenix has certified to the CCD are all medium-temperature refrigerators and low-temperature freezers. In this final rule, DOE is not amending the standards for HCT.SC.M, HCT.SC.L, HCT.RC.M, and HCT.RC.L. In regards to the HZO.RC and HZO.SC classes, in the October 2023 NOPR analysis, the August 2024 NODA analysis, and this final rule, DOE has assumed that the HZO.RC and HZO.SC classes use forced air evaporators, which is consistent with Hillphoenix's feedback. Therefore, DOE has determined that its analysis is representative of the current market.

In response to Delfield's comment, the multiplier equations presented in the August 2024 NODA do vary by capacity (*i.e.,* volume or TDA). Additionally, based on the data supporting the development of the multipliers in this final rule, DOE has determined that a single energy use multiplier is representative of the entire capacity range of the equipment class. In support of this final rule, DOE is not aware and has not received any data to support different multipliers for different capacity ranges within an equipment class.

In response to these comments and consistent with the August 2024 NODA analysis, in this final rule, DOE is adopting a single 1.07 multiplier for all equipment classes proposed in the October 2023 NOPR with qualifying features, including pass-through doors, sliding door, sliding-door pass-through doors, roll-in door, roll-through doors, forced-air evaporator, and drawer units. These performance-related features may have interdependencies that affect energy performance, and, therefore, DOE has determined that a single, consolidated 1.07 multiplier for all equipment classes is representative of the energy use characteristics of these features. DOE is adopting separate equipment classes for certain equipment categories with one or more qualifying performance-related features. Table IV.15 indicates for which equipment classes and features this distinction (and the allowed additional energy use) is applicable. DOE is establishing these equipment classes with features with an energy conservation standard (in kWh/day) that equals 1.07 multiplied by the equation for the related equipment class that does not contain these features. With respect to comments from ITW and Delfield regarding the inclusion of units with drawers in the multiplier, DOE notes that the August 2024 NODA

[75] See *www.regulations.doe.gov/certification-data/CCMS-4-Refrigeration_Equipment_-_Commercial__Single_Compartment.html#fq=%7B!tag%3DBrand_Name_s__s%7DBrand_Name_s__s%3AHillphoenix&fq=%7B!tag%3DEquipment_Family_Description_s%7DEquipment_Family_Description_s%3A%22Horizontal%20Closed%20Transparent%20%5C(HCT%5C)%22&fq=%7B!tag%3DCondensing_Unit_Configuration_Description_s%7DCondensing_Unit_Configuration_Description_s%3A%22Self%5C-Contained%20%5C(SC%5C)%22&q=Product_Group_s%3A%22Refrigeration%20Equipment%20-%20Commercial%2C%20Single%20Compartment%22.* Accessed on 10/30/24.

and this final rule include units with drawers in the list of qualifying features. *Id.* at 89 FR 68793, 68795

Table IV.15 Applicable Features for Equipment Class Standards Designated with Feature

Equipment Class	Applicable Feature(s)
VCT.SC.M (≤ 100)	Pass-through doors Sliding doors Both pass-through and sliding doors Roll-in doors Roll-through doors
VCT.SC.L (≤ 70)	Pass-through doors
VCS.SC.M	Pass-through doors Roll-in doors Roll-through doors Drawers
VCS.SC.L (≤ 100)	Pass-through doors Roll-in doors Roll-through doors Drawers
HCS.SC.L	Forced air evaporator

DOE notes that EPCA, as codified, contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(1)) Therefore, any equipment classes with features in this final rule may be limited or adjusted due to the anti-backsliding provision. In this final rule, the energy use of the selected efficiency level in TSL 3 is adjusted accordingly, if needed, to avoid backsliding against the current standard.

Due North commented that the proposed conservation standards in the October 2023 NOPR do not provide an energy use allowance for smart technology accessories, such as connectivity devices for remote control and monitoring; inventory management smart shelves, image recognition cameras, and associated computers; pay terminals; and similar technology-based accessories. (Due North, No. 87 at p. 2) Due North added that the advent of smart technologies, including artificial intelligence, will result in rapidly growing demand for these types of accessories, and DOE energy conservation standards may serve as obstacles for new technologies and innovation. (*Id.*)

In response to the comment from Due North regarding smart technologies, DOE did not propose an energy use allowance for smart technology accessories in the October 2023 NOPR. DOE notes that neither Due North, nor any other commenter, has provided data on the energy use of these technologies for CRE currently available on the market. Therefore, in this final rule, DOE is not including an energy use allowance for smart technologies. DOE welcomes any data stakeholders can provide on the energy use and adoption of these technologies in CRE for consideration in any potential future rulemaking.

Supporting Data

DOE found drawer units in CCD and compared them to analogous units with doors to analyze the increase in daily energy consumption associated with drawer units, taking into account volume differences. Characteristics shared between the pairs of analogous units include manufacturer, basic model line, and approximate dimensions. Differences in rated refrigerated volume were normalized by dividing the rated energy consumption of each unit by the rated volume, using that value to compare units in a pair with each other. The CCD data used for this analysis is compiled in table IV.16, and the average of these results is 9.9 percent increase in energy use, corresponding to a multiplier of 1.099.

Table IV.16 CCD Unit Comparisons for Unique Physical and Functional Attributes

Unit	Equipment Class	Unique Attribute Code	Rated Daily Energy Consumption (kWh/day)	Rated Volume (ft^3)
Drawer 1	VCS.SC.L	D	2.93	9
Door 1	VCS.SC.L	D	2.16	7.14
Drawer 2	VCS.SC.L	D	2.65	6.4
Door 2	VCS.SC.L	D	2.67	6.5
Drawer 3	VCS.SC.L	D	2.79	7.07
Door 3	VCS.SC.L	D	2.22	7.07
Drawer 4	VCS.SC.L	D	1.35	4.26
Door 4	VCS.SC.L	D	1.39	4.7
Drawer 5	VCS.SC.M	D	31.34	2.19
Door 5	VCS.SC.M	D	31.34	2.04
Drawer 6	VCS.SC.M	D	20.41	1.61
Door 6	VCS.SC.M	D	20.41	1.67
Drawer 7	VCS.SC.M	D	16.94	1.95
Door 7	VCS.SC.M	D	16.94	1.98
Drawer 8	VCS.SC.M	D	13.28	1.6
Door 8	VCS.SC.M	D	13.35	1.12
Drawer 9	VCS.SC.M	D	7.97	1.67
Door 9	VCS.SC.M	D	8.61	1.7
Drawer 10	VCS.SC.M	D	6.79	1.61
Door 10	VCS.SC.M	D	7.35	1.64

d. DOE Test Data

In response to the October 2023 NOPR, AHRI commented it did not find any specific information on when DOE tested products or conducted physical teardowns specific to the October 2023 NOPR. (AHRI No. 81 at p. 10) AHRI listed the sections that include discussion of the ''teardown analysis,'' which include 2.4.2 Cost Analysis, 5.1 Introduction, 5.6 Core Case Costs, and Energy Consumption Model. (*Id.*) AHRI, NAMA, NAFEM, SCC, and Hoshizaki requested that DOE make data related to CRE units tested and torn down for this rulemaking available, while maintaining manufacturer confidentiality, as concerns have been raised about the age of the units. (AHRI, No. 65 at pp. 1–2 ; NAMA, No. 85 at p. 7; NAFEM, No. 83 at pp. 8–9; Hoshizaki, No. 76 at p. 3; SCC, No. 74 at p. 2) AHRI and NAFEM expressed concern that DOE may be using units in the CRE teardowns that fail to align with those currently on the market, as significant changes were made with the energy conservation standards that went into effect in 2017. (AHRI, No. 65 at p. 2; NAFEM, No. 83 at pp. 8–9) AHRI and NAFEM added that changes in refrigerants have also taken place, such as the switch from R–134a and R–404A to low-GWP R–290 in self-contained equipment. (AHRI, No. 65 at p. 2; NAFEM, No. 83 at p. 9)

AHRI requested that DOE add to the docket all documents and data referenced in the October 2023 CRE NOPR for stakeholder review and input; AHRI further requested that DOE add an additional 60 days to the public comment period for stakeholders to have adequate time to review the data and provide meaningful comments. (AHRI, No. 65 at pp. 1–2) AHRI added that DOE has failed to make available to interested parties all data it relied upon for calculations and conclusions in this rulemaking, as required by the Administrative Procedure Act (''APA''). (AHRI, No. 81 at p. 4) AHRI commented that DOE's failure to provide the technical materials and analysis for its calculations does not align with precedence from the courts [76] on this issue. (*Id.*)

NAMA commented in support of these comments made by AHRI. (NAMA, No. 85 at pp. 9–10). NAMA added that several instances in the October 2023 NOPR do not appear to present the data DOE utilized to arrive at the provided conclusions and that this is a violation of the U.S. Court of Appeal for the District of Columbia's statement that an agency is required to allow the public to review and analyze any technical materials that it relies upon in a proposed rule. (*Id.* at p. 9)

NAMA commented it was concerned that DOE had tested units using a computer rather than actual units and requested that DOE provide detailed information on the analysis. (*Id.* at p. 8)

Zero Zone stated that DOE's description of how baseline levels are established in the October 2023 NOPR does not indicate that equipment was tested, and that baselines were established solely using data from the CCD. (Zero Zone, No. 75 at p. 1) Zero Zone questioned how DOE determined the efficiency increase of the technology options proposed without testing. (*Id.*) Zero Zone commented that if testing was not completed, DOE should reevaluate the assumptions for design options. (*Id.*) Zero Zone stated that competitors in the database already employ most of the design features proposed by DOE, and Zero Zone asked for additional detail on how DOE determined the energy reduction of the design options if no testing was performed. (*Id.* at p. 5)

NAMA stated that, to the industry, the fact that many of the efficiency options

[76] AHRI specifically referenced *American Public Gas Association* v *U.S. Department of Energy*, 72 F. 4th 124, July 7, 2023.

have already been in use for years serves as additional proof that the teardowns, analysis, and reverse engineering were performed on machines that were not representative of today's production and did not follow the final test procedure for CRE. (NAMA, No. 85 at p. 5)

Hoshizaki commented that, if given the opportunity, it could accurately guide DOE on which Hoshizaki models were manufactured before and after the 2017 rulemaking based on model numbers. (Hoshizaki, No. 76 at p. 3) Hoshizaki commented that if DOE included units produced before the 2017 rulemaking, this would explain why many of the design factors mentioned in the October 2023 TSD were not identified as already in use. (*Id.*)

In response to the August 2024 NODA, AHRI commented that DOE had not made available the data that it relied upon in the NOPR, and continues to request DOE provide access to all information, technical studies, and data that it used for this commercial refrigeration equipment rulemaking. (AHRI, No. 104 at p. 6) AHRI commented that the Administrative Procedure Act and recent case law requires that all information used be publicly available. (*Id.*)

NAMA commented that DOE stated in the November 2023 public hearing that they would make available more information on the tear-down and testing of units, however, the NODA does not contain any new information on this. NAMA commented that all of the testing was done on older machines: VCT.SC.M units were purchased in 2020 with R–290 refrigerant, VOP.SC.M unit was purchased in 2019 at 13 cu ft with R–404A refrigerant, no HZO.SC.L units were purchased or tested. (NAMA, No. 112 at p. 5)

Zero Zone commented that DOEs provided list of tear down equipment points to years of standards development that was not based on actual test data, and that DOE should have tested remote equipment. (Zero Zone, No. 114 at p. 1) Zero Zone requested that DOE postpone release of the rule until it has tested a more representative group of equipment. (*Id.*) Zero Zone stated that the standards are set at the average energy value, however manufacturers must develop equipment that has an average energy consumption below the standard so all the equipment found in a normal distribution of manufacturing would meet the standard. Zero Zone suggests that DOE should increase the allowed energy by 3 standard deviations. (*Id.*)

NAFEM commented that there was new information analyzed in the August 2024 NODA, for which the data had not been shared publicly. (NAFEM, No. 101 at pp. 4–5) NAFEM stated that this includes specifically the update of R–290 compressor performance to reflect that of the database of CRE compressors, as well as that DOE conducted additional teardown tests to reduce the R-value from 8 to 6.5 per inch, baseline fan motor assumptions and use of electronic controls. (*Id.* at p.5)

NAFEM additionally referenced the comment from AHRI in response to the October 2023 NOPR which requested DOE's teardown information, which has not been provided. (NAFEM, No. 101 at p. 5) NAFEM stated that this contravenes well settled law and provided the examples of the decisions in *Am. Pub. Gas Ass'n* v. *U.S. Dep't of Energy*, 72 F.4th 1324, 1337 (D.C. Cir. 2023) (''Generally, the technical studies and data upon which the agency relies must be revealed for public evaluation. . . .).'' and *Conn. Light & Power Co.* v. *Nuclear Regulatory Comm'n Com.*, 673 F.2d 525, 530–31 (1982) (''An agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary.'') (*Id.*)

In response to the comments regarding units tested, DOE provided information on the CRE units tested in this rulemaking cycle in table IV.17 of the August 2024 NODA. DOE notes that Section 1.2 of the NODA support document DOE stated the year the test unit was purchased. Teardowns were conducted after purchase (*i.e.,* between 2017–2024). In the August 2024 NODA, DOE stated that, based on feedback in response to the October 2023 NOPR and November 2023 Public Meeting and additional test and teardown data conducted since the October 2023 NOPR, DOE updated certain design specifications and components assumed to be used in models at the baseline efficiency level in the NODA. 89 FR 68788, 68792. As stated in the August 2024 NODA, DOE conducted additional component teardowns and reviewed the teardown data it compiled in support of this rulemaking and observed that a significant number of units contained electronically commutated motor (ECM) evaporator and condenser fan motors. *Id.* Therefore, based on DOE's teardown data, DOE presents a revised analysis in the August 2024 NODA with updated baseline fan motor components for certain equipment classes. *Id.*

Additionally, DOE provided the supporting spreadsheets that the analyses were based on for the June 2022 Preliminary Analysis, the October 2023 NOPR, the August 2024 NODA, and this final rule.

With respect to comments regarding the APA, DOE has met the APA's requirements as DOE has provided throughout this final rule, the final rule TSD, and the final rule supporting documents all of the details of the analysis conducted by DOE and the information relied upon in conducting that analysis.

In response to Zero Zone's comment regarding CRE connected to a remote condensing unit, as stated in section 1.2 of the August 2024 NODA support document, DOE did not conduct any testing on CRE with remote condensing units in support of this rulemaking. Instead, the analysis for directly analyzed remote equipment classes was based on the engineering spreadsheet model methodology of the March 2014 Final Rule, and DOE updated certain design specifications and design options for this rulemaking with current information, based on models currently available on the market, and supporting data and information provided during manufacturer interviews conducted during this rulemaking process. This approach was also supported by calibrations conducted on the self-contained CRE analysis for inputs that apply to both the self-contained analysis and the remote-condensing analysis.

When compiling the list of tested units for the August 2024 NODA and this final rule, DOE refined the October 2023 NOPR list of tested CRE that were used to support the engineering analysis, which resulted in a total of 64 units. DOE has provided anonymized data with the year purchased, refrigerant type, equipment class, volume or TDA, and daily energy consumption in table IV.17. DOE used the results of this testing as well as market research and manufacturer interviews to inform its engineering analysis spreadsheet for this final rule.

Table IV.17 Summary of CRE Units Tested

Year Purchased	Refrigerant Type	Equipment Class	Tested Volume (ft^3) or TDA (ft^2)	Tested Daily Energy Consumption (kWh/day)
2018	R-134a	HCS.SC.M	12	1.20
2018	R-134a	VCT.SC.M	45.9	4.90
2018	R-404A	VOP.SC.M	14.94	27.39
2018	R-134a	SOC.SC.M	18.23	7.84
2018	R-404A	VCT.SC.L	49.2	16.76
2018	R-404A	VCT.SC.L	49.6	14.08
2018	R-404A	SVO.SC.M	8.72	15.71
2018	R-290	VCT.SC.M	49.01	3.040
2018	R-134a	VOP.SC.M	13.46	11.92
2018	R-404A	VCS.SC.L	50.1	9.35
2018	R-290	SVO.SC.M	15	14.09
2018	R-290	SVO.SC.M	15	18.34
2018	R-134a	VCS.SC.M	46.8	2.86
2018	R-404A	VOP.SC.M	16.1	28.38
2018	R-290	HCT.SC.I	5.2	2.44
2018	R-600a	HCS.SC.L	6.96	0.72
2018	R-290	VCT.SC.I	7.58	7.44
2018	R-134a	HCS.SC.M	11.97	1.19
2018	R-404A	VOP.SC.M	31.42	53.08
2018	R-404A	SVO.SC.M	17.92	25.46
2018	R-290	HCS.SC.M	12.84	0.77
2018	R-290	SOC.SC.M	20.18	4.85
2019	R-404A	VCT.SC.L	46.72	12.42
2019	R-290	VCS.SC.M	21.58	2.01
2019	R-290	VCT.SC.M	47.56	4.34
2019	R-134a	HCS.SC.M	12.54	1.07
2019	R-290	VCT.SC.M	12.98	1.41
2019	R-290	SOC.SC.M	12.87	2.19
2019	R-134a	HCS.SC.I	17.48	4.55
2019	R-450A	VCT.SC.M	24.14	2.40
2019	R-450A	VCT.SC.M	46.21	4.87
2019	R-450A	VCS.SC.M	38.7	3.07
2019	R-450A	VCS.SC.M	38.7	3.09
2019	R-404A	VCS.SC.L	21.22	5.63
2019	R-134a	SOC.SC.I	3.1	7.92
2019	R-290	VCS.SC.L	44.3	10.13
2019	R-404A	HZO.SC.M	31.74	27.57
2019	R-404A	VOP.SC.M	12.93	14.49
2019	R-290	VCS.SC.L	69.19	15.42
2019	R-404A	VCT.SC.L	44.25	13.63
2019	R-404A	VCT.SC.I	9.55	12.79
2019	R-290	HCT.SC.I	12.72	6.66
2019	R-290	HCT.SC.I	14.84	5.65
2019	R-290	VCS.SC.M	45.86	2.11
2019	R-290	VCT.SC.M	8.72	1.43
2019	R-134a	VCT.SC.M	23.42	2.21

2020	R-290	VCT.SC.M	23.9	2.66
2020	R-290	VCT.SC.L	45.52	8.93
2020	R-290	VCT.SC.L	22.14	7.91
2020	R-290	VCT.SC.M	41	3.78
2020	R-450A	VCT.SC.H	40.21	2.97
2020	R-450A	VCT.SC.H	18.73	1.75
2020	R-600a	VCT.SC.H	7.89	1.76
2020	R-513A	SOC.SC.H	29.17	13.27
2020	R-290	VCS.SC.M	38	1.66
2020	R-134a	VCS.SC.H	5.24	1.17
2020	R-290	VCS.SC.H	25.35	1.35
2021	R-600a	VCT.SC.H	3.3	0.61
2020	R-404A	VOP.SC.H	19.99	38.95
2017	R-134a	CB.SC.M	5.12	1.62
2018	R-404A	CB.SC.L	6.1	7.60
2023	R-290	CB.SC.M	6.94	1.28
2023	R-290	CB.SC.M	8.3	1.55
2023	R-290	CB.SC.M	7.4	2.29
2023	R-290	CB.SC.L	11.65	5.24
2023	R-290	CB.SC.L	9.90	5.10

Chef Base or Griddle Stand Test Data

In response to the October 2023 NOPR regarding the amended test conditions for chef bases or griddle stands in the September 2023 Test Procedure Final Rule, NAFEM commented that DOE has provided no empirical data in support of the conclusion that the amendments adopted in the September 2023 Test Procedure Final Rule will not alter the measured efficiency of CRE currently subject to energy conservation standards. (NAFEM, No. 83 at p. 13) NAFEM stated that, in the November 2023 Public Meeting, DOE stated it tested chef bases or griddle stands at the 75 °F ambient temperature and calibrated the engineering analysis to that condition, then cross walked that condition to the 86 °F condition. (*Id.*) NAFEM commented that when DOE was asked about test data at 86 °F, DOE stated it did not receive any data for that condition. (*Id.*) Continental and NAFEM disagreed with DOE's decision to use simulated estimates of energy consumption for chef base or griddle stand units under the newly instated conditions as a crosswalk in lieu of actual test results. (Continental, No. 86 at p. 3; NAFEM, No. 83 at pp. 13–14) In response to the August 2024 NODA, Continental stated that it disagrees with the inclusion of chef bases and griddle stands until sufficient testing has been conducted at prescribed conditions, and properly vetted. (Continental, No. 107 at p. 2)

In response to the comment from NAFEM, DOE notes that chef bases or griddle stands are not currently subject to energy conservation standards, therefore, NAFEM's comment about the September 2023 Test Procedure Final Rule not altering the measured efficiency of CRE currently subject to energy conservation standards is not applicable to chef bases or griddle stands.

In response to the comments from NAFEM and Continental about test data versus modeling energy consumption in the engineering spreadsheet, DOE performed additional testing on chef bases or griddle stands at an 86 °F ambient dry-bulb temperature, as summarized in table IV., in accordance with the amended test conditions for chef bases and griddle stands prescribed in the September 2023 Test Procedure Final Rule.

In response to the October 2023 NOPR, Hoshizaki, NAFEM, Continental, and Delfield commented requesting more information on how standards for chef bases or griddle stands were established because the amended test procedure requires a different ambient temperature than other CRE and whether testing had been conducted on chef base or griddle stand units. (Hoshizaki, No. 76 at p. 4; NAFEM, No. 83 at pp. 13–14; Continental, No. 86 at pp 2–3; Delfield, No. 71 at p. 1)

In response to the October 2023 NOPR, Hoshizaki requested that DOE allow manufacturers to send chef bases or griddle stands to third-party labs for testing over a 2-year period to see where energy levels should be set, and then grant manufacturers 3 years to make necessary changes to meet this new standard. (Hoshizaki, No. 76 at p. 4)

While DOE initially tested chef bases or griddle stands at a 75 °F ambient dry-bulb temperature to inform the October 2023 NOPR analysis, the September 2023 Test Procedure Final Rule amended the tested ambient dry-bulb temperature for chef bases or griddle stands from 75 °F to 86 °F; therefore, in the October 2023 NOPR DOE revised the chef bases or griddle stand analysis using the CRE engineering spreadsheet model to calculate the energy use at an 86 °F ambient dry-bulb temperature. In the October 2023 NOPR analysis, DOE had analyzed a saturated condensing temperature (''SCT'') of 95 °F for all equipment classes, a 20-degree temperature difference with the 75 °F ambient temperature. To maintain a 20-degree temperature difference with the amended 86 °F ambient temperature for chef bases or griddle stands, in the analysis presented in the August 2024 NODA and this final rule, DOE analyzed a SCT of 106 °F for chef base or griddle stand equipment.[77]

In response to the August 2024 NODA, The CA IOUs commented that, changing engineering assumptions from

[77] *See* Section 1.3 of the NODA support document at *https://www.regulations.gov/document/EERE-2017-BT-STD-0007-0090.*

75.2 °F to 86.0 °F ambient dry bulb temperature in the NODA engineering spreadsheet increases modeled energy use by 20.3% for chef base coolers (CB.SC.M) and 9.5% for chef base freezers (CB.SC.L). (CA IOUs, No. 113, at p. 5) The CA IOUs commented that they tested popular models of chef bases based on DOE's current test procedure at 75.2 °F and 86.0 °F. (*Id.*) The CA IOUs commented that their test data and DOE's test data from the NOPR TSD show significantly higher energy consumption increases than those indicated in the NODA engineering spreadsheet at 86 °F compared to 75 °F. (*Id.*) The CA IOUs commented that, since DEC is a function of refrigerated volume for chef bases, the percent difference in DEC from 75 °F to 86 °F should also be a function of refrigerated volume. (*Id.*) The CA IOUs commented that DOE should update its engineering analysis and use available test data to validate its engineering model, ensuring more accurate predictions of standard levels and energy savings. (*Id.*)

In response to the CA IOUs comment, DOE notes that the analysis supporting the August 2024 NODA and this final rule for chef bases or griddle stands was not based on a percent difference of tested energy use from 75 °F to 86 °F. The chef base or griddle stand test data conducted at 86 °F and the subsequent teardown information from those test units were used to inform the engineering spreadsheet assumptions and calculations used to conduct this analysis. DOE did not use the test data conducted at 75 °F to inform the August 2024 NODA or this final rule analysis. Therefore, the CA IOUs request that DOE make the percent difference in DEC from 75 °F to 86 °F a function of refrigerated volume is irrelevant to this analysis. DOE agrees with the CA IOUs comment in response to the August 2024 NODA that the daily energy consumption values for the units the CA IOUs tested are consistent with DOE's data. (The CA IOUs, No. 113, at p. 2).

Since the October 2023 NOPR, DOE has updated certain baseline design specifications for chef bases or griddle stands including: the number of evaporator fans for CB.SC.L, the infiltrated air mass flow rate assumption for CB.SC.M and CB.SC.L, the discharge air temperature (''DAT'') for CB.SC.M, and the baseline evaporator temperature (''SET'') for CB.SC.L. For more details, see appendix 5A of the final rule TSD. As previously discussed in section IV.C.1.a.iii of this document, updating certain baseline design specifications is consistent with the approach in the March 2014 Final Rule.[78]

e. Development of Standard Equations

In the October 2023 NOPR, in three directly analyzed equipment classes, VCT.SC.M, VCS.SC.I, and HCT.SC.I, DOE tentatively determined to maintain the current standard equation intercept and calculated a slope based on the current standard intercept and the proposed energy use level at the representative volume or TDA. 88 FR 70196, 70216–70217 This approach was consistent with the approach taken in the March 2014 Final Rule for certain classes, in which DOE retained the offset factors for classes DOE had calculated the offset factor for in the March 2009 CRE final rule, as DOE stated in the March 2014 Final Rule that it believed that those figures continued to represent the end effects inherent in the operation of those equipment types.[79]

In response to the October 2023 NOPR, Zero Zone commented that it believes that DOE's approach in the October 2023 NOPR to keep the current standard equation intercept and calculate a new slope based on proposed use level and representative volume approach is incorrect, resulting in a close to 50-percent reduction in allowable energy use. (Zero Zone, No. 75 at p. 2)

Hoshizaki stated that equations for the model families result in curves that do not accurately give a levelized curve that provides nominal energy reduction across the full range of volumes. (Hoshizaki, No. 76 at p. 3) Hoshizaki commented that areas of the curve show a 10–20-percent reduction and some areas range from 30–60 percent reductions, which are not feasible based on the technology available today. (*Id.*)

In response to Zero Zone's and Hoshizaki's comments regarding the slope, DOE notes that in the October 2023 NOPR, consistent with the analysis described in the March 2014 Final Rule TSD for certain classes in which DOE retained the offset factors for classes DOE had calculated the offset factor for in the March 2009 CRE final rule, for all classes except VCT.SC.M, VCS.SC.I, and HCT.SC.I, DOE adjusted both the slope and intercept based on the percent reduction for the selected EL to maintain an equal percent reduction across the volume or TDA range. 88 FR 70196, 70217. DOE has updated its methodology in this final rule, consistent with the equations presented in the August 2024 NODA, to apply the energy use reduction percentage to the baseline energy use equation's slope and intercept for all classes. For VCT.SC.M, this is consistent with the March 2014 Final Rule TSD, where DOE adjusted the slope and intercept for the EPACT 2005 equipment classes. See section 5.8 of the March 2014 Final Rule TSD for more details. Additionally, as discussed in section IV.A.1.b, DOE is maintaining the 49 ft^3 representative volume for the VCT.SC.M ($V \leq 100$) class in this final rule, which is supported by an analysis conducted by DOE to confirm that the representative analysis at 49 ft^3 is also representative for volumes less than 49 ft^3.

Updating the standard line intercept for certain classes is consistent with the approach in the March 2014 Final Rule, where DOE adjusted the offset factors, or y-intercept, for certain classes in response to comments received on the NOPR. See 79 FR 17725, 17742.

Furthermore, as compared to the October 2023 NOPR, DOE is adopting less stringent efficiency levels in this final rule for the majority of equipment classes.

Zero Zone recommended that DOE review the EPA ENERGY STAR approach and the resulting multiple slope equations for different volumes. (Zero Zone, No. 75 at p. 2) Zero Zone commented this approach would consider the additional compressor units required to maintain safe food product temperatures in medium-temperature self-contained equipment. (*Id.*) Zero Zone added that EPA did not identify significant energy improvements for commercial refrigerators and freezers in its November 2022 ENERGY STAR 5.0 Commercial Refrigerators and Freezers Specification,[80] and Zero Zone recommended that DOE should follow EPA's analysis and not change the efficiency level for this product. (*Id.*)

In response to the August 2024 NODA, Zero Zone commented that DOE should not use a single line, 2-point formula, as energy use in large self-contained equipment is not strictly proportional to the volume of the unit. (Zero Zone, No. 114 at p. 2) Zero Zone requested DOE review EPA's ENERGY STAR levels for SC.M for an example of energy level variation as equipment volume increases. (*Id.*)

[78] See tables 5.A.2.2 of the NOPR and March 2014 Final Rule TSD, available at *.regulations.gov/document/EERE-2010-BT-STD-0003-0051* and *www.regulations.gov/document/EERE-2010-BT-STD-0003-0102*.

[79] *See* section 5.8 at *www.regulations.gov/document/EERE-2010-BT-STD-0003-0102*.

[80] *See www.energystar.gov/products/commercial_refrigerators_freezers/partners?_gl=1*mzqc33*_ga*MTkwMzQyNTg3LjE3MDU0MjQ1OTk.*_ga_S0KJTVVLQ6*MTcxNDA4Mzg1MC4xNy4xLjE3MTQwODM4NTMuMC4wLjA.*

In response to the comment from Zero Zone, the standard lines for the analyzed classes and capacity ranges in this final rule reflect an even application of the energy use percent reduction of the representative capacity across the capacity range of each equipment class. DOE notes that DOE's current, new, and amended standards do allow for more energy use as capacity increases, and DOE is continuing to analyze the large capacities of the seven self-contained equipment classes as discussed in section II.B.3 of this document.

f. Engineering Spreadsheet

In response to the October 2023 NOPR, ITW commented that DOE's October 2023 NOPR engineering spreadsheet should account for component performance variability. (ITW, No. 82 at p. 5) ITW provided the example of compressors, which are subject to variability in their EER due to variations in motor efficiency, copper slot fill, magnetic properties of lamination steel, machining tolerances, etc. (*Id.*) ITW commented that the extent of this normal variation was well documented in a joint study conducted by AHRI and the Association of European Refrigeration Component Manufacturers (''ASERCOM'') in 2017, which reported a normal expected variation of between 5 and 10 percent in the compressor EER. (*Id.*) Based on the above-mentioned considerations for variability, ITW requested that DOE account for a 5–10 percent discount factor to the system energy efficiency as part of any baseline or energy improvement scenario calculation. (*Id.*)

In the March 2014 Final Rule, DOE updated its compressor assumptions in response to comments received on the NOPR. 79 FR 17725, 17760. In this final rule, DOE is also updating its compressor assumptions in response to commenter feedback. With respect to the comment from ITW, DOE reviewed the white paper ITW provided, which is also referenced by the AHRI 540 compressor performance rating standard (''AHRI 540''), and DOE is applying a 5-percent increase in energy use for all compressors to account for the performance prediction uncertainty as a result of curve-fitting compressor performance maps in this final rule. This adjustment is made by increasing the overall compressor power by 5 percent in the engineering spreadsheet and aligns with commenters' feedback that a 5–10 percent increase in energy use for all compressors should be included to account for the potential variability in compressor performance. See the final rule engineering spreadsheet for further details.

Hillphoenix commented that the engineering spreadsheet contains an error for calculating the efficiency of variable-speed compressors. (*Id.* at p. 11) Hillphoenix commented also that all except three classes that used the CP4 code as a selected option show ''VALUE'' in the kWh cell for evaporator fan motors, condenser fan motors, and compressors for the selected TSL 5 energy level. (*Id.*) Hillphoenix stated that classes with CP4 code and ''VALUE'' showing in Excel include VOP.SC.M, SVO.SC.M, HZO.SC.M, HZO.SC.L, SOC.SC.M, VCT.SC.L, VCS.SC.H, VCS.SC.L, and VCS.SC.I. (*Id.*)

With respect to the comment from Hillphoenix regarding errors in the engineering spreadsheet, DOE recommends that manufacturers follow the instructions in the engineering spreadsheet on enabling iterative calculations and refreshing calculations after changing equipment classes. Without more detailed information, DOE is unable to further assist in a response to the comment from Hillphoenix.

Hillphoenix commented that the VCT.SC.M equipment class selected EL in the October 2023 NOPR does not pass the proposed energy limit. (Hillphoenix, No. 77 at p. 11) Hillphoenix commented that the formula for this error from the October 2023 NOPR is (0.05 * 49 ft^3 + 0.9) and equals a 3.35 kWh calculated energy limit, and EL 3 was selected for this class and has an energy consumption of 3.52 kWh, which is ~ 5 percent over the proposed energy limit. (*Id.*)

In response to the comment from Hillphoenix, in the October 2023 NOPR, the proposed maximum energy use formula for the VCT.SC.M equipment class was $0.054 \times V + 0.86$. Using the representative volume for that equipment class, 49.00 ft^3, to calculate the maximum energy use proposed in the October 2023 NOPR for that class results in 3.506 kWh/day. In the October 2023 NOPR, DOE proposed EL 3 for the VCT.SC.M class, which was associated with an energy use of 3.515 kWh/day. These values are 0.3 percent different from each other. The equation and values that Hillphoenix cited are different from the values in the October 2023 NOPR.

g. Capacity Metrics

In response to the October 2023 NOPR, Zero Zone stated that some manufacturers have taken advantage of the energy formula's use of refrigerated volume and increased their equipment's volume in order to have more allowable energy. (Zero Zone, No. 75 at p. 3) Zero Zone stated its belief that this approach offers limited value to the end user and does not address the goal of energy efficiency. (*Id.*) Zero Zone recommended the use of TDA for energy calculations of product classes that have transparent doors or no doors. (*Id.*)

While DOE acknowledges that some equipment with unique designs could have more or less TDA than the TDA of the representative unit analyzed at a specific volume, DOE currently assumes that these designs are manufactured for specific end-use cases and are not representative of the equipment class. DOE considers all models when developing the representative design specifications and has presented updated design specifications in this final rule. As stated in the October 2023 NOPR, given the mixed response regarding revising the capacity metrics for equipment classes, DOE has not evaluated revising the capacity metrics for any equipment classes. 88 FR 70196, 70217. In the absence of clear data to support a change in metric, it is not appropriate for DOE to make a change at this time.

2. Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated equipment, the availability and timeliness of purchasing the equipment on the market. The cost approaches are summarized as follows:

☐ Physical teardowns: Under this approach, DOE physically dismantles a commercially available equipment component-by-component, to develop a detailed bill of materials for the equipment.

☐ Catalog teardowns: In lieu of physically deconstructing equipment, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the bill of materials for the equipment.

☐ Price surveys: If neither a physical nor catalog teardown is feasible (*e.g.,* for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable), cost-prohibitive, or otherwise impractical (*e.g.,* large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by

soliciting prices from distributors and other commercial channels.

In the present case, DOE conducted the analysis using physical and catalog teardowns. Except for updates presented in this section that are consistent with the August 2024 NODA, the cost analysis used in this final rule is the same as the cost analysis in the October 2023 NOPR. See chapter 5 of the final rule TSD for additional details.

The resulting bill of materials provides the basis for the MPC estimates for equipment at various efficiency levels spanning the full range of efficiencies from the baseline to max-tech.

In the October 2023 NOPR, DOE requested comment on the method for estimating manufacturer production costs. 88 FR 70196, 70236. In the August 2024 NODA, DOE also requested comment on the updated analysis that was presented. 89 FR 68788, 68832.

a. General Approach of the Cost Analysis

In response to the October 2023 NOPR, Hussmann and AHRI requested that DOE clarify its question about the method for estimating manufacturer production costs and asked if DOE is referring to 2014 or 2023 cost information. (AHRI, No. 81 at p. 8; Hussmann, No. 80 at p. 6)

In response to the October 2023 NOPR, Hoshizaki requested more information on price-learning models that were reviewed with specific manufacturers and model numbers, as well as the parts that were evaluated for efficiency gains with manufacturer names, part numbers, and 2023 costs to verify that the parts analyzed were from 2022 and not 2014. (Hoshizaki, No. 76 at p. 4) Hoshizaki commented that DOE mentioned in the November 2023 public meeting that costs were adjusted for inflation, but the last 3 years have not been a normal inflation track, with parts and materials shortages that have led to vast price increases and longer lead times. (*Id.*) Hoshizaki commented that verification of costs to 2023 figures would be helpful to validate cost to change to higher energy efficiency. (*Id.*)

As discussed in the October 2023 NOPR, DOE updated the October 2023 NOPR analysis to reflect current inflation rates at the time of the analysis, which reflects 2022 dollars. 88 FR 70196, 70235. DOE acknowledges that there have been abnormal price trends, but notes that DOE uses inflation indices specific to the materials included in CRE to update its cost analysis in order to account for any abnormal price trends. DOE also notes that for raw metal materials, DOE uses the 5-year average prices, further described in chapter 5 of the final rule TSD. In response to Hussmann and AHRI, DOE's request for comment on manufacturer production costs in the October 2023 NOPR was referring to the 2022 dollar year analyzed in the October 2023 NOPR.

In response to the October 2023 NOPR, Zero Zone requested that if DOE maintains the current proposed levels, DOE should reevaluate the case cost analysis to account for redesign and new foam fixtures, as Zero Zone will need to make these investments to achieve a compliant product. (Zero Zone, No. 75 at p. 3) Zero Zone further requested that DOE reevaluate the engineering analysis and the proposed energy conservation standard for the VCT.SC.M product class, as well as the cost analysis for product classes anticipated to switch to R–290. *(Id.)*

In response to the comment from Zero Zone, in this final rule, DOE analyzed design option steps based on what is most representative of the current market, and DOE does not anticipate manufacturers needing to increase insulation thickness to meet the current standard and has screened out increased insulation thickness as described in section IV.B.1.a. In this final rule, DOE reviewed the cost analysis to ensure that the costs reflected R–290 designs for equipment classes in which the representative baseline was based on R–290. For further details on the cost analysis, see chapter 5 of the final rule TSD. In addition to accounting for the switch to R–290 in its cost analysis, DOE also analyzed investments required by the industry to make the switch. For details on those conversion costs, see section IV.J.3.a of this document.

In response to the October 2023 NOPR, NAMA commented that there were significant discrepancies in design option costs across equipment classes, and included a table of design options for four different equipment classes that had different costs for design options including condenser fan motors, occupancy sensors, microchannel heat exchangers, improved-insulation doors, and variable speed compressors. *(*NAMA, No. 85 at pp. 13–14) NAMA also recommended that DOE check the accuracy of estimates for machines under 30 cubic feet in capacity. *(Id.* at p. 14)

In response to the comment from NAMA, DOE did not receive data to suggest that machines under 30 ft^3 in capacity would use design options significantly different than larger equipment; therefore, DOE has not considered different costs for machines under 30 ft^3 in the analysis in this final rule. In response to NAMA's comment on design option cost differences, DOE notes that the costs for the design options that NAMA listed differ for each equipment class due to their representative units' different design specifications, including unit dimensions, capacity, and power requirements. For example, there is significant difference between costs for improved-insulation door design options for each equipment class because each equipment class representative unit has a different sized door. For further discussion on how DOE determined representative unit design specifications, see section IV.C.1 of this document and chapter 5 of the final rule TSD.

In response to the October 2023 NOPR, NAMA recommended that DOE refer to labor cost data from 2021–2023, not 2018, because the latter does not reflect overtime wages in a labor shortage, which contributes to the financial burden on manufacturers. (NAMA, No. 85 at p. 15)

DOE notes that at the NOPR stage, the unburdened fabrication and assembly wages—factors that affect the labor component of the MPC—were determined to be $16.00 per hour based on previous feedback from manufacturer interviews. DOE is unclear about NAMA's reference to using labor cost data from 2018. After reviewing recent data from the Bureau of Labor Statistics (''BLS''),[81] DOE updated its labor rates for the final rule engineering analysis to $22.00 per hour for unburdened assembly wages and $24.00 per hour for unburdened fabrication process wages. This update in the final rule analysis results in higher labor costs to make CREs of all efficiencies. Additionally, DOE accounts for fully burdened labor costs by estimating additional costs to employers associated with providing employee benefits. See chapter 5 of the final rule TSD for further details.

As discussed in the October 2023 NOPR, DOE updated the NOPR analysis to reflect current inflation rates at the time of the analysis, which reflects 2022 dollars. 88 FR 70196, 70235. In this final rule, DOE uses 2023 dollars.

b. Costs of Specific Components

In response to the October 2023 NOPR, NAMA stated that DOE significantly underestimates the cost of components that comprise a CRE unit. (NAMA, No. 85 at pp. 10–11, 13–14) NAMA commented that DOE should not base the cost of design options on one

[81] Occupational wage statistics data are available at *www.bls.gov/oes/.*

product category to another with spreads of 400 percent. *(Id.* at p. 13)

In response to the October 2023 NOPR, NAMA also commented that it does not agree with the cost of the change in DC condenser fan options as shown in the October 2023 NOPR TSD, as NAMA found that the cost for the motors was greater than $20 based on what its companies paid for the motor, the installation, and the capital costs. (NAMA, No. 85 at p. 23)

In response to the comment from NAMA regarding the cost of DC condenser fan motors, DOE notes that, in the final rule engineering analysis, DOE analyzed costs for brushless DC fan motors ranging between $23.71 and $28.80, depending on the rated wattage of the motor. In response to the comment from NAMA regarding the accuracy of component costs, DOE notes that costs were obtained from teardown analyses as well as data from manufacturer feedback. For further details on the cost analysis, see chapter 5 of the Final Rule TSD.

In response to the October 2023 NOPR, NAMA commented that for the 2022 preliminary analysis, DOE estimated a cost increase of $167 for improved insulated doors; however, NAMA estimated that the cost today is expected to be over $500, which would result in a negative payback for over 20 years. (NAMA, No. 85 at p. 25)

Regarding the comment from NAMA about the cost increase for improved insulated doors, NAMA has not provided information, such as the size, number of panes, and fill type, about the door referenced in their comment, making it difficult to provide an accurate comparison. DOE also notes it appears that NAMA is referencing the VCT.SC.M results provided in the June 2022 Preliminary Analysis, for which the ''high performance door'' design option for VCT.SC.M costs approximately $167 more than the previous design option step, and comparing that cost increase to the total cost of the door. In this final rule, consistent with the August 2024 NODA, DOE revised the door cost estimates resulting in a total cost (*i.e.,* not incremental cost) of around $380 for triple pane, argon filled glass packs on the VCT.SC.M representative unit analyzed in this final rule. DOE notes that triple pane, argon filled glass packs were the most efficient door design option analyzed at the TSL level finalized in this final rule (TSL 3), and that at TSL 3 for the VCT equipment class, the subject of NAMA's comment, DOE did not analyze a door design option beyond the baseline to improve efficiency. In this final rule analysis, DOE has updated the cost of the door design but adjusted for differences in market size and purchasing volume.

In response to the October 2023 NOPR, NAMA commented that when estimating costs for microchannel condenser coils, DOE did not include a fully burdened, amortized cost of engineering, design, creation of test models, testing, tooling, factory assembly line upgrades, fixtures, molding changes, packaging for larger and heavier machines, and other costs. (NAMA, No. 85 at p. 26)

With respect to the comment from NAMA regarding microchannel condenser coils, DOE is no longer considering microchannel condenser coils as a design option in this final rule, and has screened out this design option as discussed in section IV.B.1.g.

In response to the August 2024 NODA, NAMA commented that, while DOE did adjust some of the NOPR costs in the NODA TSD, several design options (*e.g.,* krypton filled doors, brushless DC condenser fan motors, argon filled triple pane doors, occupancy sensors with dimming) are shown as improving efficiency by amounts not proven in NAMAs testing, and the cost is significantly higher than what is shown. (NAMA, No. 112 at p. 6)

With regards to the comment from NAMA, DOE maintains its position that its door costs are representative of the industry based on commercial available door designs, performance of commercial available door designs, current costs of various door technologies, as well as feedback directly from manufacturers. NAMA did not provide additional detail to support their complains including the testing they reference in the comment. Therefore, DOE has not made any adjustments to the engineering analysis from the August 2024 NODA.

c. Variable-Speed Compressor

In response to the October 2023 NOPR, NAMA commented that the estimated cost of a VSC, $200, has not changed since its response to the June 2022 Preliminary Analysis, except for a 10-percent increase due to compressor manufacturer pricing. (NAMA, No. 85 at p. 24) NAMA commented that DOE underestimates the purchase price, the cost of the other parts necessary to make a VSC work (*i.e.,* computer controls), and the changes to the cooler. (*Id.*)

DOE disagrees with the comment from NAMA that DOE is underestimating the cost of the variable-speed compressors. In the October 2023 NOPR, DOE proposed that the MPC of a VSC at the representative volume for VCT.SC.M class was $220.52, consistent with NAMA's comment that the estimated cost of a VSC is $200 plus a 10-percent increase. $94 represents the cost differential between the cost of the single-speed compressor and a variable-speed compressor. In this final rule, DOE is maintaining the cost differential of $94.

DOE notes that NAMA did not elaborate on what it meant by ''computer controls.'' NAMA may have been referring to the need for electronic controls to set appropriate compressor speeds. DOE has determined that the cost to add additional hardware to implement variable-speed control as compared to single-speed control using an electronic control platform would be minimal (*i.e.,* the required sensors would already be in place, and the cost of any required additional microprocessor capacity would be minimal).

In addition, DOE received confidential comments related to the electronic controls assumed in the baseline in response to the October 2023 NOPR.

In response to the August 2024 NODA, Hillphoenix commented that one of the largest North American manufacturers of compressors estimates that the variable-speed compressor controller cost would be a 100 percent increase over fixed speed compressor cost, and that DOE neglected to account for cost increase of a required variable-speed compressor controller and additional components. (Hillphoenix, No. 110 at p. 4) Hillphoenix stated that there are additional costs associated with variable speed compressors, such as programming, installation, training, and the increased time for ''end of line'' testing that are not reflected in the engineering analysis. (*Id.*at p. 4–5)

Based on the preponderance of CRE units DOE tested and tore down in support of this CRE rulemaking that are currently using electronic controls, DOE determined that CRE already have the other parts necessary to make a variable-speed compressor work (*e.g.,* electronic controls are already present in existing CRE). Therefore, the main difference between single-speed and variable-speed compressors that would contribute significantly to cost is the inclusion of an inverter drive to control the speed of the compressor, which DOE has accounted for in the VSC design option MPC.

Further, in response to commenter feedback and based on the CRE units DOE tested and tore down, DOE has updated the analysis to reflect the use of electronic controls at the baseline

efficiency level for all equipment classes in this final rule.

In response to the comment from Hillphoenix that DOE neglected to account for additional costs associated with programming, installation, training, and increased testing time, DOE notes that it accounts for non-production costs (*i.e.,* selling, general and administrative expenses (''SG&A''), research and development (''R&D'') expenses, and interest) as part of the manufacturer markup, described in section IV.C.2.f of this document and chapter 12 of this final rule TSD. Additionally, research and development investments associated with variable-speed compressors were accounted for as part of the product conversion costs in the manufacturing impact analysis, as discussed in section IV.J.3.a of this document.

d. Doors With Krypton Gas Fill

In response to the October 2023 NOPR, Zero Zone stated that 40 percent of krypton gas is manufactured in Ukraine and the war makes obtaining krypton gas difficult. (Zero Zone, No. 75 at pp. 3–4) Zero Zone commented that its suppliers estimate krypton would increase the cost of a door by $35, whereas DOE estimated a cost increase of $5–6. (*Id.* at p. 4)

DOE reviewed current krypton gas prices and has observed that a cost increase of approximately $30, based on the representative unit sizes analyzed for self-contained VCT units, is representative of the current market, consistent with the comment from Zero Zone, and DOE has presented updated costs for doors with krypton gas fill in this final rule that are consistent with the August 2024 NODA. This change is similar with the March 2014 Final Rule, where DOE updated the cost assumptions for certain door design options.[82]

In response to the August 2024 NODA, Hillphoenix, Continental, Hussmann, AHRI, and Zero Zone agreed with DOE's observation that triple-pane doors with krypton gas are significantly more costly than with argon. (Hillphoenix, No. 110 at p. 5; Continental, No. 107 at p. 2; Hussmann, No. 108 at p. 3; AHRI, No. 104 at p. 8; Zero Zone, No. 114 at p. 2)

Therefore, in this final rule, consistent with commenters, DOE has maintained the August 2024 NODA values for its pricing of triple-pane doors with krypton gas.

e. Cost-Efficiency Results

The results of the engineering analysis are reported as cost-efficiency data (or ''curves'') in the form of daily energy consumption (in kWh) versus MPC (in dollars). DOE developed curves representing the primary equipment classes. The methodology for developing the curves started with determining the energy consumption for baseline equipment and MPCs for this equipment. Above the baseline, design options were implemented until all available technologies were employed (*i.e.,* at a max-tech level). DOE presents these results in chapter 5 of the final rule TSD. See chapter 5 of the final rule TSD for additional details on the engineering analysis and appendix 5B of the final rule TSD for complete cost-efficiency results.

Design Option Ordering

Based on all the comments received in response to the October 2023 NOPR and August 2024 NODA, and consistent with the precedent set by the March 2014 Final Rule, DOE has reordered the design options in the cost-efficiency results based on cost-effectiveness and likely order of implementation.[83] For more details on the updated design option ordering, see chapter 5 of the final rule TSD.

f. Manufacturer Markup

To account for manufacturers' non-production costs and profit margin, DOE applies a multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer distributes a unit into commerce. DOE developed an industry average manufacturer markup by examining the prior CRE rulemaking and annual Securities and Exchange Commission (''SEC'') 10–K reports[84] filed by publicly traded manufacturers primarily engaged in commercial refrigeration manufacturing and whose combined equipment range includes CRE. 79 FR 17725, 17758. As discussed in the following paragraphs, DOE revised the industry average manufacturer markup for this final rule analysis based on stakeholder comments. See section IV.J.2.d of this document and chapter 12 of the final rule TSD for additional information on the manufacturer markup.

In response to the October 2023 NOPR, Hillphoenix commented that the manufacturer markup of 1.40 used in the October 2023 NOPR is high based on competitive market conditions. (Hillphoenix, No. 77 at p. 7) Hillphoenix commented that the NOPR Engineering Analysis Spreadsheet Model[85] referenced a manufacturer markup of 1.42. (*Id.*) In response to the August 2024 NODA, Hillphoenix commented that DOE's suggested manufacturer markup value of 1.38 used in the August 2024 NODA was still too high based on the current competitive market pricing conditions and not representative of the CRE industry. (Hillphoenix, No. 110 at p. 5)

With respect to the comments from Hillphoenix, DOE developed the industry average manufacturer markup of 1.40 used in the October 2023 NOPR by reviewing prior CRE rulemakings, SEC Form 10–K reports, feedback gathered during confidential manufacturer interviews conducted in advance of the October 2023 NOPR, and market share weights. For the August 2024 NODA, DOE reassessed its manufacturer markup in response to stakeholder comments and adjusted its estimate using manufacturer feedback and market share weights. As a result, DOE used a manufacturer markup of 1.38 for the August 2024 NODA. DOE notes that the manufacturer markup of 1.38 is meant to represent the overall CRE industry, on average. DOE understands that manufacturer markups can vary by manufacturer, model, feature, *etc.* Based on the information available, DOE maintains an industry average manufacturer markup of 1.38 for all CRE equipment classes in this final rule analysis (*i.e.,* the manufacturer markup used in the LCC and PBP analyses and MIA), consistent with the August 2024 NODA. The Engineering Analysis Spreadsheet Model developed for this final rule also reflects a manufacturer markup of 1.38.[86]

NAMA stated that DOE's method for estimating manufacturing production costs is inaccurate, due to lack of inclusion of costs for testing, outside certification of energy, outside certification of safety, tooling, and amortization of other factory costs,

[82] See the NOPR and March 2014 Final Rule engineering spreadsheets available at *www.regulations.gov/document/EERE-2010-BT-STD-0003-0098* and *www.regulations.gov/document/EERE-2010-BT-STD-0003-0059,* respectively.

[83] See the NOPR TSD and the March 2014 Final Rule TSD for more details on changes to the design option ordering in the 2014 Final Rule. The NOPR TSD is available at *www.regulations.gov/document/EERE-2010-BT-STD-0003-0051* and the March 2014 Final Rule TSD is available at *www.regulations.gov/document/EERE-2010-BT-STD-0003-0102.*

[84] SEC's Electronic Data Gathering, Analysis, and Retrieval system is available at *www.sec.gov/edgar/searchedgar/companysearch* (last accessed April 15, 2024).

[85] Available at *www.regulations.gov/document/EERE-2017-BT-STD-0007-0055.*

[86] The Final Rule Engineering Analysis Spreadsheet Model is available at *www.regulations.gov/docket/EERE-2017-BT-STD-0007/document.*

along with inaccurate estimation of units over which tooling and manufacturing fixtures are spread. (NAMA, No. 85 at p. 30) NAMA recommended that DOE restructure the system for estimating energy savings and cost analysis. (*Id.*)

NAMA commented also that many of the analyzed design options, such as specialized glass doors, microchannel condensers, occupancy sensors with dimmer controls, and variable speed compressors, would result in additional installation time, training, and many other skill considerations compared with baseline equipment. (NAMA, No. 85 at p. 31)

Regarding the comments on testing and certification costs, DOE accounts for manufacturers' non-production costs, including selling, general and administrative expenses, and research and development expenses (*e.g.,* testing, certification, marketing costs) in its MSP through the application of a manufacturer markup to the MPCs. As such, DOE notes that the MSPs derived in the engineering analysis, which are then used in the LCC and PBP analyses and MIA, incorporate industry average research and development expenses (and other non-production costs, along with profit). DOE also accounts for the one-time, upfront investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with new or amended energy conservation standards (*i.e.,* product conversion costs) in its MIA. See section IV.J.2.c of this document or chapter 12 of the final rule TSD for additional information on conversion costs.

Regarding the comment on tooling and equipment costs, DOE accounts for manufacturing equipment, tooling, and building depreciation in its MPCs and the one-time, upfront investments in property, plant, and equipment necessary to adapt or change existing production facilities (*i.e.,* capital conversion costs) in its MIA. As such, DOE notes that the depreciation component of the MPCs in the engineering analysis require estimates of capital investments (*e.g.,* tooling, fixtures, equipment). To estimate those capital investments for the engineering analysis, DOE uses data collected from teardowns and manufacturer interviews and estimated annual production volumes for each equipment class to model a ''greenfield'' facility—using brand-new equipment that has not depreciated through use—which includes the equipment, tooling, and space requirements necessary to carry out the manufacturing processes on a representative unit. *See* chapter 5 of the final rule TSD for additional details on the cost model and estimation of MPCs.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* distributor markups, retailer markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis. At each step in the distribution channel, companies mark up the price of the equipment to cover business costs and profit margin.

As part of the analysis, DOE identifies key market participants and distribution channels. In the October 2023 NOPR, DOE considered the following distribution channels:

1a. Contractor channel with replacement: Manufacturer → Wholesaler → Mechanical Contractor → Consumer

1b. Contractor channel with new construction: Manufacturer → Wholesaler → Mechanical Contractor → General Contractor → Consumer

2. Wholesale channel: Manufacturer → Wholesaler → Consumer

3a. National account channel: Manufacturer → Consumer

3b. National account channel with general contractor: Manufacturer → General Contractor → Consumer

88 FR 70196, 70236.

In response to the October 2023 NOPR, AHRI suggested that DOE update channel 1a and 1b, create additional channels for reused or refurbished equipment, and refer to consumers as ''end-users'' because the term ''consumer'' may imply individuals or families. (AHRI, No. 81 at p. 9) AHRI also recommended that DOE include other CRE purchaser categories, such as buyers' clubs, restaurant consortia, food service consultants, and governmental bids. (*Id.*)

In consideration of the feedback from AHRI, DOE determined that the slight update to channels 1a and 1b does not impact the overall markup estimation for those channels. With regard to the suggested addition of distribution channels for reused or refurbished equipment, DOE notes that such equipment is not subject to new standards; therefore, DOE did not consider such distribution channels in the markups analysis. However, refurbishments were considered in the LCC analysis by adjusting the mean lifetime distribution assumptions and assigning a credit equivalent to the residual value of the used equipment at the selling year (see section IV.F of this document for details). DOE clarifies that it considers all purchasers of CRE in its analyses and is using the terms CRE ''purchaser'' and ''consumer'' interchangeably in this document.

NAMA recommended that DOE consider additional channels that involve the brand owner who specifies the performance of the equipment and then sells the equipment to a bottling company, which then passes the equipment down to a local retailer. (NAMA, No. 85 at p. 30) DOE appreciates the comment submitted by NAMA. DOE understands that NAMA is referring to the situation in which CRE are manufactured or packaged for sale under the name of a third-party company (*i.e.,* the brand owner) rather than that of the OEM. As part of its market and technology assessment, DOE reviews public equipment databases to identify the companies that import, private label, produce, or manufacture covered CRE. DOE identified OEMs by reviewing information from manufacturer websites, import and export data (*e.g.,* bills of lading from ImportYeti),[87] and basic model numbers. As part of that process, DOE also determined the owner of each brand listed in DOE's CCD, using the U.S. Patent and Trademark Office's Trademark Search[88] and other public sources (*e.g.,* trademark information from JUSTIA).[89] Based on a review of DOE's CCD, DOE estimates that approximately 10 to 12 percent of individual CRE model listings in its CCD are certified and marketed under a trademarked brand not owned by the actual OEM. See chapter 3 of the final rule TSD for additional information on DOE's market review.

DOE developed baseline and incremental markups for each actor in the distribution chain. Baseline markups are applied to the price of equipment with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.[90]

[87] ImportYeti, LLC. ''ImportYeti.'' Available at: *www.importyeti.com/* (Last accessed April 25, 2024).

[88] The U.S. Patent and Trademark Office's Trademark Search is available at *tmsearch.uspto.gov/search/search-information* (last accessed Sept. 9, 2024).

[89] JUSTIA, ''Trademarks.'' Available at *trademarks.justia.com/* (last accessed Sept. 9, 2024).

[90] Because the projected price of standards-compliant equipment is typically higher than the price of baseline equipment, using the same markup for the incremental cost and the baseline cost would

DOE developed baseline and incremental markups for wholesalers and contractors using U.S. Census Bureau data from the ''2017 Annual Wholesale Trade Report'' and the 2017 U.S. Economic Census, respectively.

Chapter 6 of the final rule TSD provides details on DOE's development of markups for CRE.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of CRE at different efficiencies in representative U.S. commercial buildings, and to assess the energy savings potential of increased CRE efficiency. The energy use analysis estimates the range of energy use of CRE in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of new or amended standards.

For the October 2023 NOPR, DOE calculated CRE energy consumption as part of the engineering analysis. 88 FR 70196, 70237. DOE used average single-point energy use values for each design option, as described in the October 2023 NOPR engineering analysis (see chapter 5 of the October 2023 NOPR TSD). These values consider field energy use factors prescribed in the CRE test procedure, such as typical door-opening schedules, ambient conditions, typical food and beverage loads, *etc.* Also, as discussed in chapter 7 of the October 2023 NOPR TSD, during the analysis for the 2009 final rule for CRE (74 FR 1092 (Jan. 9, 2009)), DOE conducted an energy use analysis for certain remote condensing equipment and concluded that the results agreed reasonably well with those calculated by the energy consumption model used in the engineering analysis.

In response to the October 2023 NOPR, Ravnitzky suggested that DOE should account for uncertainty and variability in the energy consumption of CRE due to factors such as ambient temperature, door openings, defrost cycles, load patterns, maintenance practices, and user behavior. (Ravnitzky, No. 57 at p. 4) Ravnitzky provided examples of how widely these factors can vary in the field and recommended DOE provide sensitivity analyses or confidence intervals showing the range of possible outcomes under different scenarios and conditions, using probabilistic methods such as Monte Carlo simulations or Bayesian inference. (*Id.*) NAFEM commented that CRE operate at various conditions, which can be more extreme than the conditions specified by the ASHRAE 72 test conditions, on which DOE is basing its analysis. (NAFEM, No. 83 at p. 24) Similarly, Continental stated that testing CRE at 75 °F/55-percent RH does not accurately represent average real-world conditions and, as a result, the energy consumption levels evaluated for this rulemaking do not reflect actual usage conditions for this equipment. (Continental, No. 86 at p. 3) ITW commented that ambient temperature, humidity, and door-opening frequency and durations in the field differ from the CRE test procedure. (ITW, No. 82 at p. 6) Specifically, regarding door-opening frequency, ITW suggested that, based on data from a quick-service restaurant kitchen, a reach-in refrigerator opens more than 400 times per day for more than 50 seconds per opening and a freezer opens about 500 times per day for more than 20 seconds per opening. (*Id.*) ITW added that such conditions would require more electricity use in the field than what would be required by the proposed standard. (*Id.*)

In response to the August 2024 NODA, Continental restated that using test procedure ambient conditions of 75 °F/55 percent RH does not reflect real-world ambient conditions, leading to a flawed energy use analysis and corresponding standard levels. (Continental, No. 107 at p. 2)

For this final rule, DOE calculated CRE energy consumption as part of the engineering analysis, which estimates the daily energy consumption in kWh/day at each analyzed efficiency level at the representative equipment volumes or TDAs for each equipment class (see chapter 5 of the final rule TSD). DOE calculated the annual energy consumption by multiplying the daily energy consumption by the number of days in a year. With respect to the comments regarding the variability in the energy consumption of CRE, DOE acknowledges that using a single-point estimate to characterize the energy use of each efficiency level in each equipment class may not capture the wide range of ways CRE are used in the field and the varying conditions at which CRE operate (*e.g.,* ambient temperature and humidity; door opening time and frequency; amount, temperature and distribution of food products inside CRE). DOE has the technical capability to include a distribution of values weighted by different factors, including the aforementioned environmental conditions and user behaviors; however, DOE does not have either data or information with enough detail from which to construct a meaningful distribution to accurately and properly characterize both the variability of the aforementioned factors and the effect those factors may have on the energy use of each analyzed equipment class. For example, DOE does not have data on how door opening frequency and duration vary among purchasers and their associated effect on CRE energy consumption in the field. DOE notes that it also considered typical CRE behavior practices in this analysis, such as the replacement of lighting fixtures, a typical maintenance practice considered also in the March 2014 Final rule. In addition, DOE accounted for typical user behavior in CRE lifetime estimates, which are driven primarily from store renovations. DOE notes that it accounts for uncertainty and variability in the LCC analysis by using a CRE purchaser sample based on the EIA 2018 Commercial Buildings Energy Consumption Survey (''2018 CBECS''),[91] which allows for regional variations in electricity prices and sales tax, and incorporating uncertainty into other parameters, such as discount rates. Additionally, DOE emphasizes that its energy usage analysis adopts a conservative approach in cases where purchaser's door-opening frequency, ambient temperatures, or food and beverage thermal loads surpass those assumed in the CRE test procedure. This is because increased energy consumption would typically result in increased operating cost savings for higher efficiency equipment compared to CRE at baseline.

In response to the October 2023 NOPR, NAFEM commented that its members report that night curtains are often viewed as an unwanted ''accessory'' by their customers and, even if purchased, are not consistently used. (NAFEM, No. 83 at p. 7) NAFEM also stated that internal testing performed to DOE guidelines of night curtains being drawn for 6 hours resulted in only a 12-percent reduction of energy usage over a 24-hour period. (*Id.*) Additionally, SCC commented that stores open 24 hrs/day are not suitable for night curtains. (SCC, No. 74 at p. 2)

DOE notes that the current energy use assumptions for night curtains are based on the CRE test procedure, which

result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that in markets that are reasonably competitive it is unlikely that standards would lead to a sustainable increase in profitability in the long run.

[91] U.S. Department of Energy—Energy Information Administration. ''2018 Commercial Buildings Energy Consumption Survey (CBECS).'' 2018. Available at *www.eia.gov/consumption/commercial/data/2018/* (last accessed Sept. 9, 2024).

assumes that night curtains are used for 6 hours per day (''hrs/day'') and attributes less than a 12 percent energy use reduction associated with this design option. Furthermore, DOE acknowledges that night curtains may not be consistently used across CRE purchasers, whether due to staff behavior or store business hours, but DOE is not aware of data on the distribution of average daily usage of night curtains that could serve as an alternative to the assumption used in the test procedure, which uses a single-point estimate. DOE also clarifies that night curtain daily operating hours in the field may vary from zero hrs/day, for establishments continuously open to the public, to 24 hrs/day, for establishments that close certain days of the week.

In response to the October 2023 NOPR, as discussed in section IV.C.1.b of this document, several commenters stated that occupancy sensors are not a desired feature by most purchasers of CRE because consumers may perceive CRE with deactivated lighting (when LED occupancy sensors are not activated) as malfunctioning and, therefore, they may not use this feature. (NAFEM, No. 83 at p. 6; Zero Zone, No. 75 at p. 4; Hillphoenix, No. 77 at p. 6; Hussmann, No. 80 at pp. 5–6; AHRI, No. 81 at p. 10)

In response to these comments, DOE performed additional research but found no data on field usage patterns of occupancy sensors. DOE acknowledges that some consumers may select to deactivate CRE occupancy sensors and thus forgo energy savings associated with this design option. Accordingly, for the August 2024 NODA, DOE updated its energy use analysis for CRE at efficiency levels with occupancy sensors so that the benefit of an occupancy sensor is applied to only 75 percent of purchasers of this feature. 89 FR 68788, 68794. The remaining 25 percent would incur the increased equipment cost but not the associated energy savings.[92] *Id.* In the August 2024 NODA, DOE also requested comments, data, and information on the fraction of CRE purchasers that may choose to deactivate their CRE occupancy sensors. *Id.*

In response to the August 2024 NODA, Hillphoenix, Continental, and Zero Zone commented that CRE end-users may believe the equipment to be malfunctioning if the equipment lights are off. (Hillphoenix, No. 110 at p. 8; Continental, No. 107 at p. 2; Zero Zone, No. 114 at p. 2) Hillphoenix added that, for this reason, open case CRE are not sold with lighting occupancy sensors to food retail buildings, such as supermarkets, while Continental stated that lighting occupancy sensors are not viable for food service buildings, such as busy commercial kitchens. (Hillphoenix, No. 110 at p. 8; Continental, No. 107 at p. 2) AHRI commented that its members are unable to determine the fraction of CRE purchasers that buy and then deactivate lighting occupancy sensors. AHRI suggested that lighting occupancy sensors only save energy in terms of lighting power consumption reduction and not via refrigeration cooling load reduction because the CRE setpoint temperature cannot be changed due to food regulations. (AHRI, No. 104 at p. 7–8) ASAP *et al.* commented that DOE is taking a conservative approach by considering that only 75 percent of consumers benefit from lighting occupancy sensors, noting that manufacturers will be able to utilize occupancy sensors to meet any amended standards because the test procedure does not include any comparable assumption about de-activation and, as a result, will give full credit for occupancy sensors. (ASAP *et al.,* No. 106 at p. 3) ASAP et al. also stated that, after the August 2024 NODA updates, VCT.SC.M and VCT.SC.I equipment classes no longer include this design option in the highest cost-effective efficiency level. *Id.*

In response to August 2024 NODA comments, DOE clarifies that its energy use analysis is based on the engineering analysis and the CRE test procedure, which consider that lighting occupancy sensors reduce direct component energy use as well as cabinet heat load for equipment that has lighting inside the refrigerated space (see section 5.1.1 of the final rule TSD for more details). For this final rule, DOE retained the use of 25 percent as a reasonable estimate for the fraction of purchasers of CRE with LED occupancy sensors that choose to deactivate this feature. However, to account for the uncertainty regarding this estimate and its effect on the energy use and LCC analysis, DOE also performed a sensitivity analysis using 50 percent for the fraction of purchasers of CRE with lighting occupancy sensors that choose to deactivate this feature. The results of this analysis show that for the selected TSL (TSL 3), the LCC savings for all equipment classes with occupancy sensors remain positive at both 75 percent and 50 percent usage. See appendix 8D for more details on this sensitivity analysis.

Chapter 7 of the final rule TSD provides details on DOE's energy use analysis for CRE.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for CRE. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of equipment over the life of that equipment, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the equipment.
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of more-efficient equipment through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of CRE in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline equipment.

For each considered efficiency level in each equipment class, DOE calculated the LCC and PBP for a nationally representative set of commercial buildings that use CRE. As stated previously, DOE developed commercial buildings samples from the 2018 CBECS. For each sample building, DOE determined the energy consumption for the CRE and the appropriate energy price. By developing a representative sample of buildings, the analysis captured the variability in energy consumption and energy prices associated with the use of CRE.

Inputs to the LCC calculation include the installed cost to the consumer, operating expenses, the lifetime of the equipment, and a discount rate. Inputs to the calculation of total installed cost

[92] DOE selected 25 percent as a reasonable estimation of the fraction of CRE purchasers that may choose to deactivate their occupancy sensors despite purchasing this feature.

include the cost of the equipment—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, equipment lifetimes, and discount rates. Inputs to the PBP calculation include the installed cost to the consumer and first year operating expenses. DOE created distributions of values for equipment lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC relies on a Monte Carlo simulation, which is a standard analytical technique used in many academic disciplines, to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations sample input values from the probability distributions and CRE user samples. For this rulemaking, DOE conducted probability analyses by sampling from probability distributions using Python. To calculate the LCC and PBP for CRE, DOE performed 10,000 Monte Carlo simulations for each variable. During a single trial, values are selected from the defined probability distributions for each variable, which enables the estimation of LCC and PBP with uncertainty evaluation. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given purchaser, equipment efficiency is chosen based on its probability. If the chosen equipment efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more-efficient equipment, DOE avoids overstating the potential benefits from increasing equipment efficiency.

DOE calculated the LCC and PBP for consumers of CRE as if each were to purchase new equipment in the expected year of required compliance with new and amended standards. New and amended standards would apply to CRE manufactured 4 years after the date on which any new or amended standard is published in the **Federal Register**. 42 U.S.C. 6313(a)(6)(C)(iv)(I) or (C)(iv)(II) Therefore, DOE used 2029 as the first full year of compliance with any new and amended standards for CRE.

Table IV. summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the final rule TSD and its appendices.

Table IV.18 Summary of Inputs and Methods for the LCC and PBP Analysis*

Inputs	Source/Method
Equipment Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Apply price learning between present (2023) and compliance year (2029) for LED lighting (1.1% average yearly decline) and variable-speed compressor electronics (6.3% average yearly decline), using historical data to derive a price scaling index to project equipment costs for those components.
Installation Cost	Assumed not to change with efficiency level for a given equipment class; therefore, not considered in the LCC and PBP analyses.
Annual Energy Use	Obtained from engineering analysis. Based on the CRE test procedure for each equipment class at each considered efficiency level.
Energy Prices	Electricity: Edison Electric Institute Typical Bills and Average Rates reports. Variability: Regional energy prices across nine census divisions.
Energy Price Trends	Based on *AEO2023*[93] price projections.
Repair and Maintenance Costs	Material costs derived from the engineering analysis and labor costs derived from RSMeans 2023. Considered replacement of LED lighting, evaporator and condenser fan motors, compressors, and night curtains; assumed LED lighting repair frequency decreases due to the presence of occupancy sensors when in use by purchaser (see section IV.E).**
Equipment Lifetime	Average: 10 years for large buildings and 20 years for small buildings. DOE defined small buildings as those less than or equal to 5,000 ft^2, while large buildings are defined as those greater than 5,000 ft^2
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered equipment or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.
Compliance Year	2029

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the final rule TSD. Energy price trends, equipment lifetimes, and discount rates are not used for the PBP calculation.
** For the 25 percent of purchasers assumed to not utilize the occupancy sensors, the LED lighting repair frequency remains the same as for CRE without occupancy sensors.

[93] For further information, see the ''Assumptions to *AEO2023*'' report that sets forth the major assumptions used to generate the projections in the *AEO2023*. Available at *www.eia.gov/outlooks/aeo/assumptions/* (last accessed Sept. 9, 2024).

1. Equipment Cost

To calculate consumer equipment costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described previously (along with sales taxes). DOE used different markups for baseline equipment and higher-efficiency equipment, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency equipment.

DOE used a price-learning analysis to account for changes in LED lamp prices that are expected to occur between the time for which DOE has data for lamp prices (2023) and the assumed compliance date of the rulemaking (2029). The price trend was derived from a price learning factor *experience curve* that computes changes in price as a function of cumulative LED lighting lamp shipments. See chapter 8 of the final rule TSD for more details on how price learning for LED lighting was applied.

As discussed in the engineering analysis (see section IV.C of this document), DOE included variable-speed compressors as a technology option for higher efficiency levels in certain self-contained equipment classes. To develop future prices specific to that technology, DOE applied a different price trend to the electronic control board of the variable-speed compressor. DOE estimated that the cost of that control board was 50 percent of the cost of the variable frequency drive (''VFD'') included in the variable speed compressor. DOE used Producer Price Index (''PPI'') data on ''semiconductors and related device manufacturing'' between 1967 and 2021 to estimate the historic price trend of electronic components in the control.[94] The analysis used an exponential curve to model the data and found that the trend closely matches the data (R-square = 0.99). This suggests prices are dropping around 6 percent per year on average. See chapter 8 of the final rule TSD for further details on this topic.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the equipment. In response to the October 2023 NOPR, several stakeholders commented that increased installation costs would occur for design options with electronic controllers, such as lighting controllers, due to additional programing time and higher technician skill requirements. (Hillphoenix, No. 77 at p. 6; FMI and NACS, No. 78 at pp. 2–3; Hussmann, No. 80 at p. 8; AHRI, No. 81 at p. 10) FMI and NACS also commented that increasing energy efficiency would lead to increased installation costs due to additional floor space rearrangement needs. (FMI and NACS, No. 78 at p. 3)

Based on these comments, DOE conducted additional research and found no evidence that any of the analyzed design options considered in this final rule require additional installation time, as electronic controls for variable-speed compressors and LED lighting occupancy sensors are typically factory-finished with pre-set configurations that do not require additional setup time by field technicians compared to baseline equipment. DOE also estimated that installation workers may already have the required skills to install the analyzed design options or would adjust their labor rates equally across all efficiency levels if the necessary skills were lacking. DOE clarifies that CRE external dimensions do not vary by efficiency level within each equipment class. Therefore, in this final rule, as in the October 2023 NOPR, DOE assumed that installation costs do not vary by efficiency level (within the same equipment class), and DOE did not account for installation costs in the LCC and PBP analyses.

For further information on installation costs, see chapter 8 of the final rule TSD.

3. Annual Energy Consumption

For each sampled equipment class, DOE determined the energy consumption for CRE at different efficiency levels using the approach described previously in section IV.E of this document.

4. Energy Prices

Because marginal electricity price more accurately captures the incremental savings associated with a change in energy use from higher efficiency, it provides a better representation of incremental change in consumer costs than average electricity prices. Therefore, DOE applied average electricity prices for the energy use of the equipment purchased in the no-new-standards case, and marginal electricity prices for the incremental change in energy use associated with the other efficiency levels considered.

DOE derived electricity prices in 2023 using data from Edison Electric Institute (''EEI'') Typical Bills and Average Rates reports. Based upon comprehensive, industry-wide surveys, this semi-annual report presents typical monthly electric bills and average kilowatt-hour costs to the customer as charged by investor-owned utilities. For the commercial sector, DOE calculated electricity prices using the methodology described in Coughlin and Beraki (2019).[95]

To estimate energy prices in future years, DOE multiplied the 2023 energy prices by the projection of annual average price changes for each of the nine census divisions from the Reference case in *AEO2023,* which has an end year of 2050.[96] To estimate price trends after 2050, the 2046–2050 average was used for all years.

DOE's methodology allows electricity prices to vary by sector, region, and season. In the analysis, variability in electricity prices is chosen to be consistent with the way the consumer economic and energy use characteristics are defined in the LCC analysis. For CRE, DOE calculated weighted-average values for average and marginal price for the nine census divisions for the commercial sector for both large-size (greater than 5,000 ft^2) and small-size (less than 5,000 ft^2) buildings. As the EEI data are published separately for summer and winter, DOE calculated seasonal prices for each division and sector. Each EEI utility in a given region was assigned a weight based on the number of consumers it serves. DOE adjusted these regional weighted-average prices to account for systematic differences between IOUs and publicly owned utilities, as the latter are not included in the EEI data set. See chapter 8 of the final rule TSD for details.

5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing equipment components that have failed; maintenance costs are associated with maintaining the operation of the equipment. Typically, small incremental increases in equipment efficiency entail no, or only minor, changes in repair and maintenance costs compared to baseline efficiency equipment.

In the October 2023 NOPR, DOE calculated repair costs by considering the typical failure rate of refrigeration system components (compressor, lighting, and evaporator and condenser

[94] Semiconductors and related device manufacturing PPI series ID: PCU334413334413; available at *www.bls.gov/ppi/* (last accessed Sept. 9, 2024).

[95] Coughlin, K. and B. Beraki. 2019. Non-residential Electricity Prices: A Review of Data Sources and Estimation Methods. Lawrence Berkeley National Lab. Berkeley, CA. Report No. LBNL–2001203. Available at *ees.lbl.gov/publications/non-residential-electricity-prices* (last accessed Sept. 9, 2024).

[96] EIA. *Annual Energy Outlook 2023.* Available at *www.eia.gov/outlooks/aeo/* (last accessed Sept. 9, 2024).

fan motors), component MPCs and associated markups, and the labor cost of repairs, which is assumed to be performed by private vendors. 88 FR 70196, 70239. DOE considered the following specific CRE components and associated failure probabilities during typical CRE lifetime in its repair cost approach: compressor (25 percent), evaporator fan motor (50 percent), condenser fan motor (25 percent), and LED lighting (100 percent), with the presence of occupancy sensors decreasing LED lighting repair frequency by half. *Id.*

In response to the October 2023 NOPR, Hussmann and NAFEM commented that EEVs, lighting controllers, and anti-sweat energy controllers require ongoing maintenance and servicing throughout the equipment lifespan. (Hussmann, No. 80 at p. 8; NAFEM, No. 83 at pp. 5, 7, 21, 22) AHRI also stated that the programming of these components requires higher technician skill and that variable-speed compressors, variable-speed condenser and evaporator fan motors, three pane glass for medium temperature reach-in cases can lead to higher maintenance and repair costs. (AHRI, No. 81 at pp. 5, 10) AHRI and Hussmann expressed concern regarding the use of technologies in CRE applications that do not have an established lifetime estimation, such as variable-speed compressors. (AHRI, No. 81 at p. 10; Hussmann, No. 80 at p. 9) Hoshizaki also indicated that variable-speed compressors could have lower lifespans than single-speed compressors. (Hoshizaki, No. 76 at p. 5) NAFEM commented that leak detection is required for some refrigerants, such as A2L and R–290, and impact maintenance and repair costs, that technicians would replace rather than repair electronic controllers in case of failure, that increasing the number of components in CRE leads to higher failure probability, and that CRE repair downtime would increase for equipment with electronic controls. (NAFEM, No. 83 at pp. 21–22) Hoshizaki stated that incorrect defrost settings could result in increased maintenance costs due to the frequency of door-opening in real-world conditions. (Hoshizaki, No. 76 at p. 5) Additionally, Hoshizaki stated a similar possibility for fan motors compared to less efficient components. (*Id.*) NAMA commented that DOE underestimated repair and maintenance costs. (NAMA, No. 85 at p. 31)

In response to these comments, DOE clarifies that EEVs and anti-sweat energy controllers are not design options considered in this final rule, that refrigerant type does not vary by efficiency level within each equipment class, and that only repair and maintenance costs that vary by CRE efficiency level are included in the LCC and PBP analyses. DOE also clarifies that the energy use analysis assumes CRE to be in operation continuously (24 hrs/day, 365 days per year). Therefore, DOE does not consider energy savings resulting from downtime for CRE repairs or any other related operational impacts, as they would have a negligible impact in the LCC and PBP analyses. Regarding concerns on the lifetime of variable-speed compressors, DOE notes that this technology option has been available in the CRE market for over a decade. DOE is also not aware of data differentiating compressor and fan motor lifetime by efficiency level or technology type. DOE did not find data suggesting that LED lighting occupancy sensors require ongoing maintenance. As stated in section IV.F.2 of this document, DOE estimates that technician workers may already have the required skills to maintain the analyzed design options or would adjust their labor rates equally across all efficiency levels if the necessary skills were lacking. Therefore, as in the October 2023 NOPR, DOE assumed that maintenance costs do not vary by efficiency level (within the same equipment class), and DOE did not account for maintenance costs in the LCC and PBP analyses in this final rule.

In response to the October 2023 NOPR, regarding the use of night curtains in CRE, DOE received comments from Zero Zone, Hillphoenix, Hussmann, NAFEM, and AHRI stating that these devices incur associated operating expenses, maintenance costs, and need to be replaced before the end of the CRE lifetime. (Zero Zone, No. 75 at p. 4; Hillphoenix, No. 77 at p. 5; Hussmann, No. 80 at p. 8; NAFEM, No. 83 at p. 7; AHRI, No. 81 at p. 10) Zero Zone stated that it contacted a major national store chain that purchases night curtains, who indicated the maximum lifespan to be 3 years but estimated an average lifetime of 18 months. (Zero Zone, No. 75 at p. 4) AHRI stated that night curtains have a 3-year lifetime. (AHRI, No. 81 at p. 10) NAFEM commented that night curtains tend to wear out within 1–2 years, requiring additional maintenance or repair during the lifetime of the CRE. (NAFEM, No. 83 at p. 7) Hillphoenix commented that night curtains are not typically ordered by customers due to their shorter lifespan and the additional costs of installation, maintenance, and operating expense due to the labor or power to close the curtains each night. (Hillphoenix, No. 77 at p. 5)

In response to the August 2024 NODA, Hillphoenix commented that CRE night curtains can lead to increased repair and maintenance costs as they contribute to short cycling of the compressor, refrigerant oil logging, or, at worse, liquid slugging of the compressor, and increased stress on start components of fixed speed compressor units on self-contained models. (Hillphoenix, No. 110 at p. 10) The CA IOUs commented that they agree with DOE's approach of considering night curtain replacement before the end of CRE lifetime. (CA IOUs, No. 113 at p. 2) Zero Zone stated that the life expectancy of night curtains can be 1 to 3 years. (Zero Zone, No. 114 at p. 2)

In light of the comments received, DOE reviewed data on night curtain lifespans, operational expenses, maintenance, and repair costs, assessing their potential influence on the analytical results of the LCC and PBP analysis. As stated in the August 2024 NODA, DOE also contacted retailers and manufacturers of night curtains of similar cost to the ones contained in the engineering analysis. 89 FR 68788, 68795–68796. These manufacturers and sellers reported lacking information on night curtain lifespan but stated that the lifetime varies according to user care. *Id.* One manufacturer reported a recent replacement from a unit that lasted 10 years. *Id.*

Regarding the comment by Hillphoenix stating that CRE night curtains could lead to increased repair and maintenance costs, it is unlikely that night curtains would cause short-cycling of the compressor because night curtains offer extra insulation against ambient conditions, which reduces the rate of temperature increase within the refrigerated spaces. This results in shorter on-cycles and longer off-cycles, reducing overall compressor run time and, potentially, wear on CRE components. In terms of the other potential effects mentioned (*i.e.,* liquid slugging of the compressor, refrigerant oil logging, or increased stress on start components of fixed speed compressor units on self-contained models), DOE found no literature or data reporting field use patterns of night curtains and whether the use of night curtains has a positive or negative effect on CRE compressors and components. However, in a DOE report prepared by the National Renewable Energy Laboratory

(''NREL''),[97] a study on the energy performance of grocery stores evaluating the effect of night curtains on 103 open refrigerated cases found positive operation and maintenance savings resulting from the installation of night curtains.

In any case, whether positive or negative, DOE did not account for the potential repair and maintenance impacts associated with the daily operation of night curtains due to the lack of specific data. In light of the NREL report, DOE understands this is a likely conservative approach. DOE also assumed that the daily operation of night curtains may be part of the regular job duty of existing employees. DOE reasonably expects new equipment sold with night curtains to come properly balanced and configured upon installation.

In this final rule, consistent with the August 2024 NODA approach and based on commenter feedback and DOE's additional research, DOE retained the following assumptions on the repair costs of night curtains. First, DOE used 5 years as a reasonable estimate for the average lifetime of all night curtains. As a result, depending on the lifetime associated with each CRE and the building type it may be installed in, night curtains may be replaced once or several times during the CRE lifetime. Second, DOE assumed a half-hour night curtain replacement labor duration at the same labor rates (according to RSMeans 2023) as other CRE components assumed to be replaced during the CRE lifetime (*e.g.,* compressors) in the LCC analysis. DOE assigned these labor rates according to each purchaser's census division to better account for national labor cost variability.

6. Equipment Lifetime

For CRE, DOE used a lifetime distribution to characterize the probability equipment will be retired from service at a given age. For the October 2023 NOPR, DOE estimated an average lifetime of 10 years for CRE in large buildings and 20 years for CRE in small buildings, with a maximum lifetime of 40 years for each. 88 FR 70196, 70240. DOE also assumed that the probability function for the annual survival of CRE would take the form of a Weibull distribution. *Id.* A Weibull distribution is a probability distribution commonly used to measure failure rates.[98] In response to the October 2023 NOPR, AHRI and Hussmann agreed with DOE's CRE lifetime assumptions. (AHRI, No. 81 at p. 10; Hussmann, No. 80 at p. 9) NAMA also agreed with DOE's lifetime assumptions but stated that they do not accurately reflect the lifetimes of refurbished equipment. (NAMA, No. 85 at p. 32) Storemasters commented that additional CRE modifications could increase equipment complexity and cost, thus potentially reducing CRE lifetime. (Storemasters, No. 68 at p. 1) Hussmann stated that smaller food-retailers use their CRE longer than large food-retailers and that smaller food-retailers may attempt to expand CRE lifetimes through repairs. (Hussmann, No. 80 at p. 9) NAFEM and Hussmann commented that purchasers may attempt to expand CRE lifetimes through repairs. (NAFEM, No. 83 at p. 23; Hussmann, No. 80 at p. 9)

In this final rule, DOE retained the lifetime assumptions from the October 2023 NOPR: the mean lifetime distribution assumption for CRE was assumed to be 10 years for large-size buildings and 20 years for small-size buildings, with a maximum lifetime of 40 years for each.

With respect to the comments regarding the lifetimes of refurbished CRE, DOE clarifies that it does not analyze the energy use of refurbished CRE because such equipment is not subject to new standards. However, DOE accounted for purchasers who sell their CRE to companies that refurbish CRE before the end of the equipment lifetime by assigning a credit equivalent to the residual value of the used equipment at the selling year. See the following section (IV.F.7 of this document) for details on the residual value approach.

See chapter 8 of the final rule TSD for more information on equipment lifetime.

7. Residual Value for Refurbished CRE

To model the phenomenon of CRE sold for refurbishment, DOE utilized a residual value for such equipment in the LCC. The residual value represents the remaining dollar value of surviving CRE at the average age of refurbishment. In the October 2023 NOPR, DOE estimated that refurbishments would occur at 5 years for small-size food-service buildings (*e.g.,* restaurants) and 10 years for small-size food-sales and other commercial buildings. 88 FR 70196, 70240. To account for the value of CRE with remaining life to the consumer, the LCC model applies this residual value as a ''credit'' at the end of the CRE lifetime and discounts it back to the start of the analysis period. *Id.* This credit was applied to a fraction of self-contained CRE, totaling about 10 percent of all CRE in the LCC sample. *Id.*

In response to the October 2023 NOPR, Hussmann commented estimating that remote cases are typically refurbished after 10–12 years of use, while self-contained CRE are refurbished less frequently but sooner, after 7–9 years of use. (Hussmann, No. 80 at p. 9) During the November 2023 Public Meeting, True commented that the CRE manufacturers have little knowledge and data about the refurbishment market but suggested that restaurant chains typically buy new CRE and, after usage, resell them, while, small-business restaurants tend to buy refurbished equipment due to the lower cost associated with refurbished units. (November 2023 Public Meeting Transcript, No. 64 at pp. 126–128) Hussmann also commented that smaller independent retailers are more likely to refurbish their CRE compared to other businesses due to having less capital available to purchase new units. (Hussmann, No. 80 at p. 9) However, NAFEM commented that larger restaurant chains can also buy refurbished equipment when opening a new store and could later replace them with new equipment if the store remains open. (November 2023 Public Meeting Transcript, No. 64 at pp. 128–129) Hillphoenix stated that refurbished equipment are usually 50 percent the cost of new equipment. (Hillphoenix, No. 77 at p. 2)

Following the August 2024 NODA, the CA IOUs commented in support of the NODA analysis update that expanded the self-contained CRE refurbishment market to include all businesses, regardless of size. (CA IOUs, No. 113 at p. 2) Several commenters stated that, in addition to self-contained CRE, remote-condensing CRE are also subject to refurbishments when stores close or undergo remodeling. (AHRI, No. 104 at p. 8; Hillphoenix, No. 110 at p. 11; Hussmann, No. 108 at p. 2)

In response to these comments, DOE acknowledges that remote-condensing CRE may also be subject to refurbishments when stores close or undergo remodeling. However, the refurbishment schedule of remote-condensing CRE is more likely to coincide with the estimated corresponding CRE lifetimes in the LCC analysis. As discussed in the previous section, CRE in large-size buildings (in which remote-condensing CRE are typically installed) are estimated to have a 10-year average lifetime -primarily reflecting store renovations or closures. Therefore, in the LCC analysis, DOE did not account for a refurbishment credit to CRE purchasers. Nonetheless, as

[97] See Advanced Energy Retrofit Guides for Grocery Stores, available at *www.nrel.gov/docs/fy13osti/54243.pdf* (last accessed Sept. 9, 2024).

[98] Weibull distributions are commonly used to model appliance and equipment lifetimes.

discussed in the following section (IV.G of this document), DOE applied price elasticity to all CRE (including remote-condensing units) as part of a sensitivity analysis. The results of this analysis can be found in Appendix 10C of the final rule TSD.

In this final rule, consistent with the August 2024 NODA approach, DOE applied a credit to about 10 percent of all CRE in the sample. This credit may apply to any self-contained equipment regardless of building size, based on the premise that if the refurbishment market offers a favorable economic opportunity, it could be utilized by all businesses, not just businesses in small-size buildings. DOE retained the same assumptions as in the October 2023 NOPR regarding the average CRE lifetimes at the time of refurbishment, occurring after 5 years for food-service buildings (*e.g.,* restaurants) and after 10 years for food-sales, and other building types (*e.g.,* grocery stores).

8. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to commercial consumers to estimate the present value of future expenditures and savings.

For purchasers of CRE in the commercial sector, DOE used the cost of capital to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so the cost of capital is the weighted-average cost to the firm of equity and debt financing. This corporate finance approach is referred to as the weighted-average cost of capital. DOE used currently available economic data in developing commercial discount rates, with Damodaran Online being the primary data source.[99] The weighted-average discount rate for the commercial sector for CRE is 6.4 percent.

See chapter 8 of the final rule TSD for further details on the development of discount rates.

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

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of equipment efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards) in the compliance year. This approach reflects the fact that some consumers may purchase equipment with efficiencies greater than the baseline levels in the absence of new or amended standards.

To estimate the energy efficiency distribution of CRE for 2029, DOE used test data, feedback from manufacturer interviews, surveys (see Trade Associations Survey, No. 50), and the ''Single Compartment Commercial Refrigeration Equipment'' data from DOE's CCD, accessed in February 2024.[100]

In response to the October 2023 NOPR, NEEA and NWPCC commented that DOE uses R–290 as the no-new-standards case (*i.e.,* baseline) for self-contained CRE because the proposed standard compliance dates will occur after EPA refrigerant restriction compliance dates that require R–290 or another low-GWP refrigerant. (NEEA and NWPCC, No. 89 at p. 5) NEEA and NWPCC commented that R–290 is expected to improve efficiency compared to current refrigerants because of its higher refrigeration-cycle efficiency over current refrigerants, so accounting for this ensures DOE is not overestimating savings from increased standards. (*Id.*) As discussed in the engineering analysis (section IV.C.1.a.i of this document), DOE assumed that all manufacturers will switch to R–290 for self-contained CRE in response to the December 2022 EPA NOPR. The EPA compliance date is 2025, which is earlier than the expected DOE CRE energy conservation standards compliance date of 2029. This approach reduces the potential maximum energy savings below the baseline compared to the June 2022 Preliminary Analysis. The October 2023 EPA Final Rule maintained a 2025 compliance date for self-contained CRE. As such, DOE maintains its approach from the October 2023 NOPR for self-contained CRE within the scope of this rulemaking.

To create a robust sample for the energy efficiency distribution used in the LCC analysis, DOE separated the analyzed CRE equipment classes into 20 separate groups. For the equipment classes that DOE relied on CCD model count data to formulate the efficiency distributions, this approach was used to allow equipment classes with a limited sample to share the efficiency distribution of a group of similar classes with a larger sample in the CCD. DOE compared energy use data from the CCD with energy use equations from the engineering analysis to derive model counts at each efficiency level. Equipment classes whose efficiency distributions were derived from aggregated data from manufacturer interviews, surveys, and test data were assigned their own groups. The estimated market shares for the no-new-standards case for CRE and the corresponding groupings are shown in table IV.. See chapter 8 of the final rule TSD for further information on the derivation of the efficiency distributions.

In advance of the October 2023 NOPR, DOE conducted manufacturer interviews and collected shipments data for several equipment classes. 88 FR 70196, 70241. The equipment classes for which data was collected account for 75 percent of total shipments and are marked with an asterisk in table IV.[101] *Id.* For the remainder of the equipment classes for which DOE was not able to collect representative shipments data from manufacturers due to low sample sizes, DOE utilized the CCD database to estimate the no-new-standards-case efficiency distribution. *Id.* DOE followed this same approach for this final rule.

[99] Damodaran, A. Data: Cost of Capital by Industry Sector, United States. 2023. Available at *pages.stern.nyu.edu/~adamodar/* (last accessed Sept. 9, 2024).

[100] U.S. Department of Energy. Compliance Certification Database (''CCD'') for Refrigeration Equipment—Commercial, Single Compartment. Available at *www.regulations.doe.gov/certification-data/* (last accessed February. 9, 2024).

[101] For some of these classes, such as chef bases or griddle stands and high-temperature refrigerators, DOE also developed the efficiency distributions based on DOE's test data, data submitted by manufacturers, ENERGY STAR certified data, and data from DOE's CCD.

Table IV.19 No-New-Standards Case Efficiency Distributions in 2029

Equipment Class**	Group	Market Share by Efficiency Level***							
		EL 0	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6	EL 7
VOP.RC.M	1	36%	11%	53%					
VOP.RC.L	1	36%	11%	53%					
VOP.SC.M*	2	90%	0%	2%	4%	1%	4%		
VCT.RC.M	3	9%	35%	5%	8%	43%			
VCT.RC.L	3	15%	61%	9%	15%				
VCT.SC.H*	4	27%	14%	14%	0%	9%	9%	0%	27%
VCT.SC.M*	5	43%	16%	1%	1%	0%	1%	39%	
VCT.SC.L*	6	40%	50%	0%	0%	0%	10%		
VCT.SC.I	7	2%	10%	37%	52%				
VCS.SC.H*	8	0%	25%	50%	25%				
VCS.SC.M*	9	45%	26%	30%					
VCS.SC.L*	10	52%	0%	44%	4%				
VCS.SC.I	10	8%	7%	53%	32%				
SVO.RC.M	11	58%	12%	31%					
SVO.SC.M	12	51%	5%	3%	8%	2%	30%		
SOC.RC.M	13	12%	50%	0%	1%	37%			
SOC.SC.M	14	41%	2%	1%	5%	0%	7%	0%	44%
HZO.RC.M	15	100%							
HZO.RC.L	15	100%							
HZO.SC.M	16	7%	48%	45%					
HZO.SC.L	16	7%	48%	45%					
HCT.SC.M	17	43%	6%	35%	1%	2%	13%		
HCT.SC.L	17	26%	3%	21%	1%	1%	8%	40%	
HCT.SC.I	17	26%	3%	21%	1%	1%	8%	40%	
HCS.SC.M	18	24%	35%	41%					
HCS.SC.L	18	40%	60%						
CB.SC.M*	19	23%	0%	23%	54%				
CB.SC.L*	20	31%	15%	15%	38%				

* The distributions for these equipment classes were derived from aggregated data from the Trade Associations Survey, test data, and manufacturer interview data.

** Certain equipment classes have large percentages of shipments at both baseline and at max tech; these distributions are due to variability in equipment design across the market.

*** The sum of certain equipment classes may not equal 100 percent due to rounding.

The LCC Monte Carlo simulations draw from the efficiency distributions and assign an efficiency to the CRE purchased by each sample consumer in the no-new-standards case. The resulting percent shares within the sample match the market shares in the efficiency distributions. For further details on probability analysis and Monte Carlo simulation, see appendix 8B of the final rule TSD.

While DOE acknowledges that economic factors may play a role when consumers purchase CRE, assignment of CRE efficiency for a given installation based solely on economic measures, such as life-cycle cost or simple payback period, most likely would not fully and accurately reflect actual real-world installations. There are a number of market failures discussed in the economics literature that illustrate how purchasing decisions in the commercial sector with respect to energy efficiency are unlikely to be perfectly correlated with energy use. One study in particular showed evidence of substantial gains in energy efficiency that could have been achieved without negative repercussions on profitability, but the investments had not been undertaken by firms.[102] The study found that multiple

[102] DeCanio, S. J. (1998). ''The Efficiency Paradox: Bureaucratic and Organizational Barriers to

organizational and institutional factors caused firms to require shorter payback periods and higher returns than the cost of capital for alternative investments of similar risk. A number of other case studies similarly demonstrate the existence of market failures preventing the adoption of energy-efficient technologies in a variety of commercial sectors around the world, including office buildings,[103] supermarkets,[104] and the electric motor market.[105]

While this literature is not specific to CRE, DOE finds that the method of assignment simulates behavior in the CRE market, where market failures and other consumer preferences result in purchasing decisions not being perfectly aligned with economic interests, more realistically than relying only on apparent cost-effectiveness criteria derived from the limited information in CBECS.[106] DOE further emphasizes that its approach does not assume that all purchasers of CRE make economically irrational decisions (*i.e.,* the lack of a correlation is not the same as a negative correlation). As part of the sample assignment, some buildings with high refrigeration load will be assigned higher efficiency CRE, and some buildings with particularly low refrigeration energy use will be assigned baseline CRE. By using this approach, DOE acknowledges the variety of market failures and other consumer behaviors present in the CRE market, and does not assume certain market conditions unsupported by the available evidence.

First, consumers are motivated by more than simple financial trade-offs. There are consumers who are willing to pay a premium for more energy-efficient equipment because they are environmentally conscious.[107] There are also several behavioral factors that can influence the purchasing decisions of complicated multi-attribute products, such as CRE. For example, consumers (or decision makers in an organization) are highly influenced by choice architecture, defined as the framing of the decision, the surrounding circumstances of the purchase, the alternatives available, and how they're presented for any given choice scenario.[108] The same consumer or decision maker may make different choices depending on the characteristics of the decision context (*e.g.,* the timing of the purchase, competing demands for funds), which have nothing to do with the characteristics of the alternatives themselves or their prices. Consumers or decision makers also face a variety of other behavioral phenomena including loss aversion, sensitivity to information salience, and other forms of bounded rationality.[109] R.H. Thaler, who won the Nobel Prize in Economics in 2017 for his contributions to behavioral economics, and Sunstein point out that these behavioral factors are strongest when the decisions are complex and infrequent, when feedback on the decision is muted and slow, and when there is a high degree of information asymmetry.[110] These characteristics describe almost all purchasing situations of appliances and equipment, including CRE. The installation of a new or replacement CRE is done infrequently, as evidenced by their mean lifetime. Further, if the purchaser of the CRE is not the entity paying the energy costs (*e.g.,* a building owner and tenant), there may be little to no feedback on the purchase.

10. Payback Period Analysis

The PBP is the amount of time (expressed in years) it takes the consumer to recover the additional installed cost of more-efficient equipment, compared to baseline equipment, through energy cost savings. PBPs that exceed the life of the equipment mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the equipment and the change in the first-year annual operating expenditures relative to the baseline. DOE refers to this as a ''simple PBP'' because it does not consider changes over time in operating cost savings. The PBP calculation uses the same inputs as the LCC analysis when deriving first-year operating costs.

As noted previously, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing equipment complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the new and amended standards would be required.

In response to the October 2023 NOPR, Hussmann commented that retailers purchasing equipment will not consider PBPs greater than 3 years for design options and prefer payback periods under 2 years. (Hussmann, No. 80 at p. 8) Hussmann further commented that DOE's payback periods at the proposed standard levels for many of the equipment classes are above the rebuttable presumption threshold of 3 years according to EPCA. (*Id.*) In response to the October 2023 NOPR, Hillphoenix commented that the reported payback periods are beyond the industry standard of 2–3 years. (Hillphoenix, No. 77 at p. 5) Hillphoenix added that these increased costs will be passed onto consumers, and particularly low-income consumers, by citing a 2023 study by the U.S. Government Accountability Office (''GAO'')[111] (*Id.* at pp. 5–6) NAFEM commented that many payback periods are longer than the equipment lifetime; thus, consumers will never enjoy the economic benefit of the more expensive

Profitable Energy-Saving Investments,'' *Energy Policy,* 26(5), 441–454.

[103] Prindle 2007, op. cit. Howarth, R.B., Haddad, B.M., and Paton, B. (2000). ''The economics of energy efficiency: insights from voluntary participation programs,'' *Energy Policy,* 28, 477–486.

[104] Klemick, H., Kopits, E., Wolverton, A. (2017). ''Potential Barriers to Improving Energy Efficiency in Commercial Buildings: The Case of Supermarket Refrigeration,'' *Journal of Benefit-Cost Analysis,* 8(1), 115–145.

[105] de Almeida, E.L.F. (1998), ''Energy efficiency and the limits of market forces: The example of the electric motor market in France,'' Energy Policy, 26(8), 643–653.

Xenergy, Inc. (1998), United States Industrial Electric Motor Systems Market Opportunity Assessment. Available at *www.energy.gov/sites/default/files/2014/04/f15/mtrmkt.pdf* (last accessed Sept. 9, 2024).

[106] CBECS identifies CRE in each representative building (and further breaks down to 'open' and 'closed' refrigeration cases in each building with CRE). Also, as discussed in section IV.F.6, building size and category (*i.e.,* food sales, food service, or other building categories) are correlated with CRE lifetimes, which are sampled using probability distributions.

[107] Ward, D. O., Clark, C. D., Jensen, K. L., Yen, S. T., & Russell, C. S. (2011): ''Factors influencing willingness-to pay for the ENERGY STAR® label,'' *Energy Policy, 39*(3), 1450–1458. (Available at: *www.sciencedirect.com/science/article/abs/pii/S0301421510009171*) (Last accessed January 5, 2024).

[108] Thaler, R.H., Sunstein, C.R., and Balz, J.P. (2014). ''Choice Architecture'' in *The Behavioral Foundations of Public Policy,* Eldar Shafir (ed).

[109] Thaler, R.H., and Bernartzi, S. (2004). ''Save More Tomorrow: Using Behavioral Economics in Increase Employee Savings,'' *Journal of Political Economy* 112(1), S164–S187. *See also* Klemick, H., et al. (2015) ''Heavy-Duty Trucking and the Energy Efficiency Paradox: Evidence from Focus Groups and Interviews,'' *Transportation Research Part A: Policy & Practice,* 77, 154–166. (providing evidence that loss aversion and other market failures can affect otherwise profit-maximizing firms).

[110] Thaler, R.H., and Sunstein, C.R. (2008). Nudge: Improving Decisions on Health, Wealth, and Happiness. New Haven, CT: Yale University Press.

[111] Available at *www.gao.gov/assets/gao-23-105846.pdf* (last accessed Sept. 9, 2024).

CRE. (NAFEM, No. 83 at p. 17) NAFEM suggested that PBPs above 3–7.6 years will cause consumers to turn to cheaper refurbished equipment. (*Id.* at pp. 17–18) In response to the October 2023 NOPR, Zero Zone commented suggesting that DOE should use a maximum payback of 3 years and eliminate any TSLs that exceed 3 years. (Zero Zone, No. 75 at p. 3) Kirby commented that the proposed standards will significantly require excessive payback periods for redesigning equipment and refrigeration. (Kirby, No. 66 at p. 2) In addition, in the November 2023 Public Meeting, Arneg USA commented that, in its experience, customers are not interested in anything with a payback period of more than 3 years. (November 2023 Public Meeting Transcript, No. 64 at pp. 112–113)

In response to the August 2024 NODA, Zero Zone commented that the CRE industry invests in features that have a 1–2 year payback period, thus DOE should include design components that have a relatively shorter payback. (Zero Zone, No. 114 at p. 2) Hillphoenix also commented reiterating their NOPR comment. (Hillphoenix, No. 110 at p. 9)

In response to the comments from Hussmann, Hillphoenix, NAFEM, Zero Zone, and Kirby, and Arneg USA, DOE acknowledges that the estimated payback periods in the October 2023 NOPR are longer than the 2–3 years typically expected for voluntary efficiency upgrades in some equipment classes. However, while DOE strives to propose standards that encourage adoption by industry stakeholders, when deciding whether a proposed standard is economically justified, DOE determines whether the benefits of the standard exceed its burdens by considering the seven statutory factors discussed in section II.A of this document ((1) economic impact; (2) operating cost savings; (3) energy savings; (4) utility impact; (5) competition; (6) the need of the nation to conserve; (7) other factors). DOE considers the seven statutory factors when evaluating a TSL and provides a detailed comparative discussion and rigorous justification on that TSL (see section V.C of this document for a detailed discussion on the adopted TSL for this final rule). DOE notes that, for most of the analyzed equipment classes, the payback period at the selected TSL in the October 2023 NOPR is below the equipment's lifetime, or within the range suggested by NAFEM. In addition, the shipment-weighted average PBP for all equipment classes at the selected TSL (TSL 3) is 3.5 years. Regarding the GAO study cited by Hillphoenix, the report mentions many factors that affect the food supply chain and can affect retail food prices to consumers but it does not cite the cost increase of CRE, or any other grocery store equipment capital cost, as a relevant factor influencing food price inflation. DOE also clarifies that, according to 42 U.S.C. 6316(e)(1) and 42 U.S.C. 6295(o)(2)(B)(iii), when the rebuttable presumption criterion is not met, this criterion is not taken into consideration when determining whether a standard is economically justified.

G. Shipments Analysis

DOE uses projections of annual equipment shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[112] The shipments model takes an accounting approach, tracking market shares of each equipment class and the vintage of units in the stock. Stock accounting uses equipment shipments as inputs to estimate the age distribution of in-service equipment stocks for all years. The age distribution of in-service equipment stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

For the shipments analysis conducted for this final rule, DOE followed the same approach as the October 2023 NOPR, with the exception of CRE that may be subject to refurbishment, as discussed in the following paragraphs.

DOE categorized CRE based on the building types in which they are used as food sales, food service, and all other building types, according to the 2018 CBECS, as discussed earlier in this document. DOE also used the 2018 CBECS to further differentiate CRE into open and closed refrigeration units. DOE estimates demand for these equipment categories by calculating demand coming from new construction as well as the replacement of retiring units for each year.

To calculate new demand for CRE in each category, DOE combined new and existing floorspace projections from *AEO2023* with saturation estimates based on 2018 CBECS and *AEO2023.* DOE also collected shipments data during manufacturer interviews and re-estimated the market shares for each equipment class based on the collected data. DOE scaled the shipment and stock estimates from the floorspace and saturations calculations to the data obtained from manufacturers for the year 2022. DOE notes that, due to lack of shipments data for some equipment classes with a small market share, DOE estimated their shipments based on other equipment classes with similar characteristics for those equipment classes. For example, in this final rule, DOE assumed that shipments of VCT.SC.H are 1 percent of VCT.SC.I and that shipments for HZO.SC.M are equivalent to HZO.SC.L. More information on these assumptions can be found in chapter 9 of the final rule TSD. DOE also compared its shipments data with numbers reported by ENERGY STAR in its unit shipment and market penetration report for the calendar year 2022.[113] DOE's shipment results are generally consistent with the figures provided by ENERGY STAR, which reported 50-percent market penetration for the reported year. Shipments for CRE categories in each application are then disaggregated across the analyzed CRE classes, using fixed market shares derived from data collected during manufacturer interviews.

Historically, the annual amount of CRE capacity shipped has been depicted in linear feet, which is also an alternative way to express shipments data. The linear feet shipped for any given year can be found by multiplying each unit shipped by its associated average length and then summing all the linear footage values. Chapter 9 of the final rule TSD presents the representative equipment-class lengths used for the conversion of per-unit shipments to linear footage within each equipment class.

To compute demand for replacements, DOE used the lifetime distributions determined in the LCC analysis, which estimates an average lifetime of 10 years for large grocery/multi-line stores (food-sales buildings) and restaurants (food-service buildings), and an average lifetime of 20 years for small food-sales and food-service buildings, with a maximum lifetime of 40 years for all equipment. In each analysis year of the model, DOE calculated retirements across the distribution to compute all demand arising from the retirements.

In response to the October 2023 NOPR, several stakeholders provided comments related to CRE

[112] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general, one would expect a close correspondence between shipments and sales.

[113] ENERGY STAR®. ENERGY STAR Unit Shipment and Market Penetration Report Calendar Year 2022 Summary. 2023. U.S. Environmental Protection Agency and U.S. Department of Energy. Available at *www.energystar.gov/sites/default/files/2022%20Unit%20Shipment%20Data%20Summary%20Report.pdf* (last accessed July 29, 2024).

refurbishments. AHRI commented that energy efficiency gains are lost when consumers refurbish CRE and argued that refurbished CRE could cost up to 45 percent less than new CRE, causing the refurbished market to grow. (AHRI, No. 81 at pp. 8, 11–12) According to AHRI, their surveyed suppliers of refurbished equipment reported double-digit growth in the past few years. (*Id.* at p. 12) Hussmann emphasized the growth of the refurbishment market due to increased costs and payback periods and commented that the compound annual growth rate (''CAGR'') of the refurbishment industry in FY20, FY21, FY22 was 23 percent, 25 percent, and 11 percent, respectively. (Hussmann, No. 80 at p. 9) Further, Hussmann estimated a 10 percent annual growth in this market since 2015. (*Id.* at pp. 9–10) Hillphoenix commented that the cost of refurbished equipment is usually 50 percent less than the cost of new CRE, and that two large U.S. retailers are currently considering establishing their own in-house refurbishment program. (Hillphoenix, No. 77 at p. 2) Hillphoenix emphasized the growth of the refurbished market due to supply chain shortage and component cost increases, and stated there are at least 20 companies that refurbish CRE and suggested DOE reach out to those companies. (*Id.*) NAFEM commented that increased equipment prices are leading to refurbishment in all business sizes. (NAFEM, No. 83 at pp. 18, 23) NAMA also requested that DOE evaluate the energy use of refurbished machines and estimate the impact that equipment price increases associated with new standards may have on delaying purchase of new CRE or incentivizing purchase of refurbished CRE. (NAMA, No. 85 at pp. 16–17) NAMA added that any changes in the design options will cause significant increases in the cost of the machines, which will cause the purchaser to consider other alternatives including delaying the purchase of new equipment, purchasing refurbished machines, and importing machines from overseas, all of which will delay energy savings from being realized. (NAMA, No. 85 at p. 19) Furthermore, Storemasters commented that increased equipment prices would lead to fewer independent retailers opening new branches or remodeling existing ones. (Storemasters, No. 68 at p. 1)

In response to the August 2024 NODA, several stakeholders reiterated their concern about the growth of the refurbishment market, and its impact on energy savings as an unregulated industry. Hillphoenix commented that the lower cost of refurbished CRE drives the growth of the refurbishment market and suggested that DOE reach out to the more than 20 retailers dealing in refurbished equipment for data on the size and growth of the refurbishment industry. (Hillphoenix, No. 110 at p. 2) NAMA commented that the design options analyzed would significantly increase equipment costs, which could result in consumers purchasing refurbished CRE or delaying the purchase of new CRE. (NAMA, No. 112 at p. 6) AHRI restated their concern that the new standards will increase CRE costs, causing customers to buy less energy efficient, refurbished CRE. (AHRI, No. 104 at p. 8)

To account for the effect of a potential increase in refurbished CRE as a result of increased prices from CRE standards, in the October 2023 NOPR, DOE had assumed a price elasticity effect for a small fraction of CRE shipments, which was limited to small-sized buildings. 88 FR 70196, 70242. In response to the stakeholder comments on refurbished CRE, in the August 2024 NODA, DOE modified its price elasticity approach based on the premise that if the refurbishment market offers a favorable economic opportunity, it could be utilized by all businesses. Accordingly, for the August 2024 NODA DOE applied price elasticity to all self-contained units, regardless of the building size where those units are installed. DOE notes that the price elasticity effect and a resulting reduction in CRE shipments is dependent on the price difference between the price consumers pay in the no-new-standards case and the standards case. DOE applied an elasticity constant of -0.5 to shipments for self-contained CRE and scaled this constant down to -0.15 over a period of 20 years (then constant thereafter) from the current year of calculations. DOE also acknowledges that, while a CRE refurbishment market may well exist and its magnitude may have recently increased due to supply chain and equipment price increases, this phenomenon applies to the CRE market overall and is not a result of energy efficiency standards on CRE. With regard to self-contained units, DOE estimates that their market share is approximately 86 percent of the new (*i.e.,* not refurbished) CRE market within the scope of this final rule. DOE notes that decision makers consider many other factors aside CRE purchase price when evaluating business openings or expansions, including the operating cost of CRE over the lifetime of the equipment, as well as other business factors. Nonetheless, because more efficient CRE would actually lead to *increased* shipments in the standards cases if DOE were to account for efficiency elasticity, DOE followed a conservative approach and did not account for efficiency elasticity in its shipments analysis. In response to the comment from NAMA regarding importing machines from overseas, DOE notes that 10 CFR 429.5(a) states that any person importing any covered product or covered equipment into the United States shall comply with the provisions of this part, and parts 430 and 431, and is subject to the remedies of this part.

As discussed in section IV.F.7, following the August 2024 NODA, AHRI, Hillphoenix and Hussmann commented that, in addition to self-contained CRE, remote-condensing CRE are also subject to refurbishments when stores close or undergo remodeling. (AHRI, No. 104 at p. 8; Hillphoenix, No. 110 at p. 11; Hussmann, No. 108 at p. 2)

In response to these comments, DOE acknowledges that remote-condensing CRE may also be subject to refurbishments when stores close or undergo remodeling, potentially rendering such CRE subject to price elasticity, in addition to self-contained CRE. To account for the potential impact in the NIA and MIA of all CRE being subject to refurbishments, DOE applied price elasticity to all CRE shipments as part of a sensitivity analysis. The results of this analysis show that at the selected TSL (TSL 3), there is a 0.39 percent decrease in the cumulative shipments compared to the no-new standards case, in the first 5 years after the rulemaking compliance year (2029). See appendix 10C of the final rule TSD for more details. The MIA results of the sensitivity analysis indicate a minimal impact in the change in INPV at TSL 3 as compared to the change in INPV at TSL 3 for the reference scenario. See chapter 12 of the final rule TSD for the MIA results of the price elasticity sensitivity analysis. Consistent with the August 2024 NODA, in this final rule, DOE continues to apply price elasticity to all-self-contained CRE as its reference scenario. At the selected TSL for the reference scenario, there is a 0.37 percent decrease in the cumulative shipments compared to the no-new standards case, in the first 5 years after the rulemaking compliance year (2029).

In response to the October 2023 NOPR and the August 2024 NODA, Hillphoenix commented that the proposed standards for many of the closed equipment classes (*e.g.,* HCT, VCT, and VCS) are concerning, as the industry continues to transition to

closed cases for additional energy savings. (Hillphoenix, No. 77 at p. 1; Hillphoenix, No. 110 at p. 1) Hillphoenix commented that the cost increase of closed cases required to implement the design changes necessary will slow the transition from open cases to more energy-efficient closed-door models. (*Id.*) Hillphoenix stated that any CRE with lids or doors saves approximately 60-percent energy over their open-display counterparts. (*Id.*) Hillphoenix stated that many retailers have converted their VOP/HZO open cases to VCT/HCT classes by retrofitting doors in existing installations to capture the aforementioned energy savings, but requirements for further energy reduction will lead to many closed products being discontinued from the market, which is counter to the goal of reducing energy consumption. (*Id.*)

Regarding the transition from open to closed cases and how standards may affect this transition, DOE reviewed the first cost increase of open cases (VOP and HZO equipment families) relative to corresponding door cases (VCT and HCT equipment families, respectively) between the no-new-standards case and the standards-cases evaluated by DOE and determined that, overall, the increase in first cost for door case equipment classes is smaller than that for open case equipment classes at the considered standard levels. Therefore, DOE concludes that the transition from open to closed cases will not be affected by standards.

In response to the October 2023 NOPR, NAMA commented that DOE's shipments estimates are incorrect and may be off by as much as 50 percent and added that there is no specific information on shipments by category in the October 2023 NOPR TSD. (NAMA, No. 85 at p. 3) Furthermore, NAMA commented that while most of the projections on cost, capital, and utility concerns in the October 2023 NOPR TSD refer to CRE connected to a refrigerant supply system, the impact on self-contained units is much greater and stated that this is not acknowledged in the October 2023 NOPR TSD or the October 2023 NOPR. (*Id.* at p. 10) NAMA recommended that DOE review data from ENERGY STAR regarding shipments with which to modify the percentages according to sales-weighted numbers, which would likely result in a significant effect on the equipment within NAMA's scope. (*Id.*) NAMA also requested that DOE use shipment data of new rather than a collection of new and refurbished units. (*Id.* at p. 20)

In response to the August 2024 NODA, NAMA reiterated the claim that DOE's shipments estimates are off by as much as 50 percent, and that refurbished units have not been accounted for in this data. (NAMA, No. 112 at p. 5) NAMA also repeated their request for information on shipments. (*Id.* at p. 6–7)

In response to the comments from NAMA, DOE notes that shipment estimates by equipment class are available in chapter 9 of the October 2023 NOPR TSD, as well as chapter 9 of this final rule TSD. In this final rule, total CRE shipments in 2029 are estimated to be 1.42 million units. DOE clarifies that all data inputs for shipments estimates are associated with new units. Also, as discussed earlier in this section, DOE reviewed historical CRE ENERGY STAR shipments data to estimate CRE shipments and self-contained units specifically. For self-contained units, DOE used estimates based on manufacturer interviews in 2022 to determine that their market share is approximately 86 percent of the CRE market covered by this final rule.

Chapter 9 of the final rule TSD provides additional details regarding the shipments analysis.

H. National Impact Analysis

The NIA assesses the NES and the NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[114] (''Consumer'' in this context refers to consumers of the equipment being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual equipment shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, equipment costs, and NPV of consumer benefits over the lifetime of CRE sold from 2029 through 2058.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each equipment class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each equipment class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of equipment with efficiencies greater than the standard.

DOE utilized the Python programming language for its NIA to calculate the energy savings and the national consumer costs and savings for each TSL. The final results of this analysis are available in the NIA spreadsheet, accessible at *www.regulations.gov/docket/EERE-2017-BT-STD-0007*. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV. summarizes the inputs and methods DOE used for the NIA analysis for this final rule. Discussion of these inputs and methods follows table IV. See chapter 10 of the final rule TSD for further details.

[114] The NIA accounts for impacts in the United States and U.S. territories.

Table IV.20 Summary of Inputs and Methods for the National Impact Analysis

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2029
Efficiency Trends	N/A (No efficiency trends were applied)
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL. Incorporates projection of future equipment prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	Annual, weighted-average values from the LCC model.
Energy Price Trends	Prices from LCC analysis and *AEO2023* projections (to 2050) and extrapolation after 2050.
Energy Site-to-Primary and FFC Conversion	Time-series conversion factors based on *AEO2023*.
Discount Rate	3 percent and 7 percent
Present Year	2024

1. Equipment Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.9 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered equipment classes for the year of anticipated compliance with an amended or new standard.

For the standards cases, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (2029). In this scenario, the market shares of equipment in the no-new-standards case that do not meet the standard under consideration would ''roll up'' to meet the new standard level, and the market share of equipment above the standard would remain unchanged.

In the October 2023 NOPR, due to an absence of data on trends in efficiency, DOE assumed no efficiency trend over the analysis period for both the no-new-standards and standards cases. 88 FR 70196, 70244. For a given equipment class, market shares by efficiency level were held fixed to their estimated distribution in 2029.[115] *Id.*

In response to the October 2023 NOPR, AHRI recommended that DOE review its CCD for efficiency data and trends. (AHRI, No. 81 at p. 12) Hussmann provided data on the efficiency improvement of one of its highest volume cases in the VOP.RC.M equipment class and showed a 46-percent reduction in energy use between 1985 and 2023. (Hussmann, No. 80 at p. 11–12) Hussmann further stated that other equipment classes, such as VCT.RC.L, have shown similar trends. (*Id.*) DOE appreciates the comments and data provided by AHRI and Hussmann. DOE reviewed CCD data between 2017 and 2024 and did not identify a significant pattern in CRE efficiency trends. Furthermore, DOE notes that the energy efficiency improvement from the March 2014 Final rule and the energy efficiency improvement reported by Hussmann for the VOP.RC.M class between 2012 and 2023 are similar. Therefore, the efficiency improvement provided by Hussmann in recent years may be a result of the March 2014 Final Rule, and not an efficiency improvement trend in the absence of standards. Hence, for this final rule, DOE continued to assume no trend in efficiency in the no-new-standards and the standards cases.

2. National Energy Savings

The NES analysis involves a comparison of national energy consumption of the considered equipment between each potential standards case (*i.e.,* TSL) and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (*i.e.,* stock) of equipment (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO2023*. Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

Use of higher-efficiency equipment is sometimes associated with a direct rebound effect, which refers to an increase in utilization of the equipment due to the increase in efficiency and reduction in operating cost. DOE did not find any data on the rebound effect specific to CRE that would indicate end-users or CRE purchasers would alter the utilization of their equipment as a result of an increase in efficiency. CRE are typically plugged in and operate continuously; therefore, DOE assumed a rebound rate of 0.

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and GHG and other emissions in the NIA and emissions analyses included in future energy conservation standards

[115] DOE notes that, as discussed in section IV.C.1.a.i of this document, DOE has accounted for CRE efficiency trends by assuming that all self-contained units will have transitioned to R–290 (propane) by the compliance year (2029).

rulemakings. 76 FR 51281 (August 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (''NEMS'') is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [116] that EIA uses to prepare its *AEO*. The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the final rule TSD.

At the November 2023 Public Meeting, EEI suggested that DOE consider modifying its analysis to account for the captured energy approach that EIA is now using and/or the zero emissions approach by ASHRAE for noncombustible renewables as alternative FFC factors. (November 2023 Public Meeting Transcript, No. 64 at p. 149) EEI also requested that DOE review the NREL Cambium databases [117] and conduct a sensitivity analysis using alternative FFC factors. (*Id.* at pp. 149–150) With respect to the comment from EEI, it has been DOE's practice for many years to rely on EIA's *AEO* for deriving site-to-primary and FFC energy factors. DOE is aware that, starting with the September 2023 Monthly Energy Review, EIA began converting electricity generation from noncombustible renewables into primary energy using the captured energy approach rather than the fossil fuel equivalency approach that it had previously used. However, the *AEO2023* that DOE used for this final rule still reflects the fossil fuel equivalency approach. DOE will consider conducting a sensitivity analysis using the captured energy approach, as well as a sensitivity analysis using a scenario with a high level of renewable energy market share for any future rulemakings.

In response to the August 2024 NODA, NAMA commented that DOE addressed their request to separate some equipment classes into two categories based on size being above or below 30 cubic feet. (NAMA, No. 112 at pp. 4–5) However, NAMA stated that this change is not reflected in DOE's national impacts analysis to show lesser projected energy savings for smaller units. *Id.* In response, DOE notes that the energy savings shown in the NIA depend not only on the energy savings of a single unit, but also on its market share and shipment numbers over the analysis period. A unit with lesser energy savings might register higher savings on a national level due to its larger volume of shipments. For example, VCT.SC.M (non-large) is shown to have 0.09 quads of FFC savings while VCT.SC.M (large) is shown to have 0.02 quads of FFC savings at max EL (EL 6) in the August NODA. While the average daily energy consumption of the large representative unit is more than three times higher than that of the non-large representative unit, the ratio of their market shares (shipments) is approximately 1:9.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) total annual installed cost, (2) total annual operating costs (which include energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of equipment shipped during the projection period.

As discussed in section IV.F.1 of this document, DOE developed price trends for CRE of each equipment class containing variable-speed compressors and/or LED lighting. By 2058, which is the end date of the projection period, the average CRE LED lighting price is expected to drop by approximately 25 percent, while the average price of variable-speed compressors is expected to decrease by approximately 85 percent, relative to projected 2029 prices. Because these component prices do not typically contribute substantively to the overall price of equipment, overall equipment prices are projected to decrease by at most 4.0 percent by 2058 relative to 2029. The price of equipment at the current baseline efficiency level is expected to drop by at most 3 percent in the same period. For details on the price learning methodology and assumptions, see chapter 8 of the final rule TSD.

The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average commercial energy price changes in the Reference case from *AEO2023,* which has an end year of 2050. To estimate price trends after 2050, the 2046–2050 average was used for all years. To estimate repair and maintenance costs, as discussed in section IV.F.5 of this document, DOE considered the typical failure rate of refrigeration system components, component MPCs and associated markups, and the labor cost of repairs. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO2023* Reference case that have lower and higher economic growth. Those cases have lower and higher energy price trends compared to the Reference case. In addition, the low economic benefits scenario reflects a no-price-learning approach to calculate the equipment costs. NIA results based on these cases are presented in appendix 10C of the final rule TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this final rule, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (''OMB'') to Federal agencies on the development of regulatory analysis.[118] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

[116] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2018,* DOE/EIA–0581(2019), April 2019. Available at *www.eia.gov/outlooks/aeo/nems/overview/pdf/0581(2018).pdf* (last accessed July 22, 2024).

[117] See *www.nrel.gov/docs/fy23osti/84916.pdf* for more information (last accessed July 22, 2024). The Cambium datasets include alternative projections on the U.S. electric sector under different scenarios.

[118] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* Available at *www.whitehouse.gov/omb/information-for-agencies/circulars* (last accessed Aug. 19, 2024). DOE used the prior version of Circular A–4 (September 17, 2003) in accordance with the effective date of the November 9, 2023 version. Available at *www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* (last accessed Aug. 19, 2024).

a. Sensitivity Analysis for Equipment With Unique Energy Use Characteristics

As discussed in section IV.C.1.c of this document, to account for CRE with certain features (*e.g.,* pass-through, sliding door, sliding-door pass-through, roll-in, roll-through, forced-air evaporator, and drawers), DOE applied a single multiplier of 1.07 to the energy use of CRE with these features. To evaluate the impact of such CRE on the NIA, DOE conducted a sensitivity analysis in this final rule and estimated the NES and NPV by applying a 1.07 energy use multiplier to CRE with these features.

Given a lack of market data regarding CRE with these unique energy use characteristics, DOE modeled two sensitivities, each with a different approach to assumptions regarding market shares. In the first approach, DOE relied on CCD model counts to estimate market shares of CRE with unique energy use characteristics. In the second approach, DOE assumed that these CRE hold a flat 5 percent market share within their equipment class.

To model this sensitivity, DOE assumed that the efficiency distribution of the equipment with unique features is the same as that of the overall equipment class. DOE assumed an increased energy consumption for the affected equipment by a factor of 7 percent. The results of these sensitivity analyses are shown in Appendix 10C of the final rule TSD.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended energy conservation standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. In response to the October 2023 NOPR, an individual commenter submitted a confidential comment that expressed support for the proposed rule but also stated concern that the standards could impose a significant financial burden on small and medium-sized businesses. (Individual Commenter, No. 58 at pp. 1–2) Kirby commented that the proposed purchase prices will limit the growth of small and midsize companies. (Kirby, No. 66 at p. 2) NAMA stated that the cost of the new and amended standards will be significantly higher, with lower energy savings than DOE's estimates, and added that this will affect NAMA's members in ''food deserts.'' (NAMA, No. 85 at p. 2)

For this final rule, DOE analyzed the impacts of the considered standard levels on small businesses. Regarding the comment from NAMA on this rulemaking's impact on ''food deserts'' (*i.e.,* areas where consumers have limited access to healthy and affordable food options), DOE does not have specific data on the businesses that operate in such areas but assumes that most of them are small businesses. For this subgroup, DOE applied discount rates and electricity prices specific to small businesses to the same consumer sample that was used in the standard LCC analysis. DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on these subgroups. Chapter 11 in the final rule TSD describes the consumer subgroup analysis and provides detailed results. See also section V.B.1.b of this document for a summary of the subgroup analysis results.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of new and amended energy conservation standards on manufacturers of CRE and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of projected industry cash flows, the INPV, investments in research and development (''R&D'') and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how new and amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the GRIM, an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, unit shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant equipment. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of more-stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a no-new-standards case and the various standards cases (*i.e.,* TSLs). To capture the uncertainty relating to manufacturer pricing strategies following new and amended standards, the GRIM estimates a range of possible impacts under different manufacturer markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the final rule TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the CRE manufacturing industry based on the market and technology assessment and publicly available information. This included a top-down analysis of CRE manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.,* revenues; materials, labor, overhead, and depreciation expenses; selling, general, and administrative expenses (''SG&A''); and R&D expenses).

DOE also used public sources of information to further calibrate its initial characterization of the CRE manufacturing industry, including company filings of form 10–K from the SEC,[119] corporate annual reports, the U.S. Census Bureau's *Annual Survey of Manufactures* (''*ASM*''),[120] the U.S. Census Bureau's *Economic Census,*[121] the U.S. Census Bureau's *Quarterly*

[119] U.S. Securities and Exchange Commission. *Electronic Data Gathering, Analysis, and Retrieval system.* Available at *www.sec.gov/edgar/searchedgar/companysearch* (last accessed April 11, 2024).

[120] U.S. Census Bureau. *Annual Survey of Manufactures.* (2012–2021). Available at *www.census.gov/programs-surveys/asm/data.html* (last accessed April 11, 2024).

[121] U.S. Census Bureau. *Economic Census.* (2012 and 2017). Available at *www.census.gov/programs-surveys/economic-census.html* (last accessed April 15, 2024).

Survey of Plant Capacity Utilization,[122] and reports from Dun & Bradstreet.[123]

In Phase 2 of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of new and amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of CRE in order to develop other key GRIM inputs, including product and capital conversion costs, and to gather additional information on the anticipated effects of energy conservation standards on revenues, direct employment, capital assets, industry competitiveness, and subgroup impacts.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with representative manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by new and amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers, niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one subgroup for a separate impact analysis: small business manufacturers. The small business subgroup is discussed in section VI.B of this document, ''Review under the Regulatory Flexibility Act,'' and in chapter 12 of the final rule TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to new or amended standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash-flow analysis that incorporates manufacturer costs, manufacturer markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from a new or amended energy conservation standard. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2024 (the base year of the analysis) and continuing to 2058. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of CRE, DOE used a real discount rate of 10.0 percent, which was derived from industry financials and then modified according to feedback received during manufacturer interviews.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the new or amended energy conservation standard on manufacturers. As discussed previously, DOE developed critical GRIM inputs using a number of sources, including publicly available data, results of the engineering analysis, results of the shipments analysis, and information gathered from industry stakeholders during the course of manufacturer interviews and public comments in response to the October 2023 NOPR. The GRIM results are presented in section V.B.2 of this document. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the final rule TSD.

a. Manufacturer Production Costs

Manufacturing more efficient equipment is typically more expensive than manufacturing baseline equipment due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of covered equipment can affect the revenues, gross margins, and cash flow of the industry. For this final rule, DOE relied on a design-option approach, supported with testing and reverse engineering of directly analyzed CRE, similar to the approach in the August 2024 NODA and October 2023 NOPR. The design options were incrementally added to the baseline configuration and continued through the ''max-tech'' configuration (*i.e.,* implementing the ''best available'' combination of available design options).

For a complete description of the MPCs, see section IV.C of this document and chapter 5 of the final rule TSD.

b. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment projections derived from the shipments analysis from 2024 (the base year) to 2058 (the end year of the analysis period). See section IV.G of this document and chapter 9 of the final rule TSD for additional details.

c. Product and Capital Conversion Costs

New or amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and equipment designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each equipment class. For the MIA, DOE classified these conversion costs into two major groups: (1) product conversion costs, and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make equipment designs comply with new or amended energy conservation standards. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant equipment designs can be fabricated and assembled.

DOE based its estimates of the product conversion costs that would be required to meet each efficiency level on information obtained from manufacturer interviews; the design pathways analyzed in the engineering analysis; the equipment teardown analysis; the shipments analysis; and model count information. DOE estimated the product development effort—including engineer, laboratory technician, and marketing resources—associated with each design option and scaled the costs based on the number of basic models (or model

[122] U.S. Census Bureau. *Quarterly Survey of Plant Capacity Utilization.* (2010–2022). Available at *www.census.gov/programs-surveys/qpc/data/tables.html* (last accessed April 11, 2024).

[123] Dun & Bradstreet Hoovers. Subscription login accessible at *app.dnbhoovers.com/*(last accessed March 15, 2024).

platforms, depending on the nature of the design option). The product development effort varied by design option. DOE-modeled door design changes (*i.e.,* moving from a double-pane to triple-pane door, incorporating vacuum-insulated glass) would require more complex system redesigns and more cost, as compared to implementing more efficient components (*e.g.,* incorporating a PSC motor or an ECM). DOE also assumed that an additional engineering effort would be required to optimize variable-speed compressors to ensure energy efficiency benefits, based on interview feedback.

To estimate industry product conversion costs, DOE multiplied the product development cost estimate at each efficiency level for each equipment class by the number of industry basic models or equipment platforms that would require redesign. DOE used its CCD [124] and CEC's MAEDbS [125] to identify CRE models covered by this rulemaking. To identify chef bases or griddle stands and high-temperature CRE models, DOE further relied on publicly available data aggregated from the web scraping of retail websites. DOE used the no-new-standards case efficiency distribution from the shipments analysis to estimate the model efficiency distribution for chef bases, griddle stands, and high-temperature CRE. DOE also included the estimated cost of testing to the DOE test procedure for chef bases, griddle stands, and high-temperature units using the estimated per-unit testing cost of $5,000 detailed in the September 2023 Test Procedure Final Rule. 88 FR 66152, 66215.

For this final rule, DOE used its product conversion cost methodology from the October 2023 NOPR and updated data sources from the August 2024 NODA. Specifically, DOE incorporated the most recent Department of Labor's BLS Occupational Employment and Wage Statistics wage data [126] into its product conversion cost estimates and refreshed its equipment database to reflect current model listings. Furthermore, in response to stakeholder comments to the October 2023 NOPR regarding the increase in testing and certification costs associated with new safety standards (*i.e.,* UL 60335–2–89) and industry test standards (see Hoshizaki, No. 76 at p. 2), DOE doubled product conversion costs associated with UL testing and industry certification for this final rule, consistent with the August 2024 NODA.

In addition to the sources used to derive product conversion costs, DOE relied on additional sources of information such as the Trade Associations Survey,[127] submitted in advance of the October 2023 NOPR, to estimate the capital conversion costs manufacturers would incur to comply with potential new and amended energy conservation standards. During interviews, manufacturers provided estimates and descriptions of the tooling changes required by the considered design options. Based on these inputs, DOE assumed that most component swaps, while requiring moderate product conversion costs, would not require changes to existing production lines or equipment, and, therefore, would not require notable capital expenditures because one-for-one component swaps would not require changes to existing production equipment (*i.e.,* manufacturers will continue to be able to use their existing production equipment and production lines to manufacture CRE that achieve higher efficiency levels through component swaps, which are typically associated with lower efficiency levels). However, based on manufacturer feedback, DOE modeled some tooling and capital expenditures when manufacturers implement improved door designs and variable-speed compressors. For improved door designs, some manufacturers noted that they would need new fixtures. Incorporating additional panes of glass for high-volume equipment classes could also necessitate heavier duty lifting equipment to transport and assemble heavier glass packs. For variable-speed compressors, which could be larger than existing single-speed compressors, manufacturers may need new tools for the baseplate. To estimate industry capital conversion costs, DOE scaled the estimated capital expenditures at each efficiency level for each equipment class by the number of applicable OEMs.

As previously stated, the Trade Associations Survey included information about the anticipated capital investments associated with a range of design options. (Trade Association Survey, No. 50 at pp. 16–18) The survey results showed high capital investments associated with increasing insulation thickness and incorporating vacuum-insulated panels. (*Id.* at p. 18) As discussed in section IV.B.1 of this document, DOE excluded these technologies from further consideration in the engineering analysis. Other design options potentially requiring notable capital investment included microchannel condensers, additional panes of glass, and variable-speed compressors. Although DOE analyzed microchannel condensers as a design option to improve efficiency in the October 2023 NOPR, DOE notes that it did not analyze microchannel condensers as a design option in the August 2024 NODA or this final rule analysis. DOE compared feedback from the Trade Associations Survey with information from the equipment teardown analysis and manufacturer interviews and incorporated the feedback where applicable.

Consistent with the August 2024 NODA, DOE adjusted its capital conversion cost estimates from 2022$ to 2023$ for this final rule but otherwise maintained its capital conversion cost methodology from the October 2023 NOPR.

In general, DOE assumes all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new standard. The conversion cost figures used in the GRIM can be found in section V.B.2.a of this document. For additional information on the estimated capital and product conversion costs, see chapter 12 of the final rule TSD.

d. Manufacturer Markup Scenarios

MSPs include direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied manufacturer markups to the MPCs estimated in the engineering analysis for each equipment class and efficiency level. Modifying these manufacturer markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case scenarios to represent uncertainty regarding the potential impacts on prices and profitability for

[124] U.S. Department of Energy's Compliance Certification Database is available at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (last accessed Jan. 31, 2024).

[125] California Energy Commission's Modernized Appliance Efficiency Database System is available at *cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (last accessed Jan. 31, 2024).

[126] U.S. Department of Labor, ''Occupational Employment and Wage Statistics,'' (May 2023). Available at *www.bls.gov/oes/2023/may/oes_nat.htm#17-0000* (last accessed May 22, 2024). See National median annual wages for ''17–2071 Electrical Engineers,'' ''17–2141 Mechanical Engineers,'' ''17–3027 Mechanical Engineering Technologists and Technicians,'' and ''13–1082 Project Management Specialists.''

[127] *See* Trade Associations Survey, No. 50 at pp. 16–18. Available at *www.regulations.gov/document/EERE-2017-BT-STD-0007-0050.*

manufacturers following the implementation of new and amended energy conservation standards: (1) a preservation-of-gross-margin-percentage scenario, and (2) a preservation-of-operating-profit scenario. These scenarios lead to different manufacturer markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation-of-gross-margin-percentage scenario, DOE applied a single uniform ''gross-margin percentage'' across all efficiency levels and equipment classes, which assumes that manufacturers would be able to maintain the same amount of profit as a percentage of revenues at all efficiency levels within an equipment class. As manufacturer production costs increase with efficiency, this scenario implies that the per-unit dollar profit will increase. In the October 2023 NOPR, DOE used a gross-margin percentage of 29 percent for all equipment classes.[128] 88 FR 70196, 70247. In the August 2024 NODA and this final rule, DOE used a gross-margin percentage of 28 percent for all equipment classes based on comments in response to the October 2023 NOPR and market share weights.[129] Manufacturers tend to believe it is optimistic to assume that they would be able to maintain the same gross-margin percentage as their production costs increase, particularly for minimally efficient equipment. Therefore, this scenario represents a high bound of industry profitability under new and amended energy conservation standards. To address manufacturer concerns about reduced margins and profitability under potential amended standards, DOE also analyzes a preservation-of-operating-profit scenario.

Under the preservation-of-operating-profit scenario, as the cost of production goes up under a standards case, manufacturers are generally required to reduce their manufacturer markups to a level that maintains base-case operating profit. DOE implemented this scenario in the GRIM by lowering the manufacturer markups at each TSL to yield approximately the same earnings before interest and taxes in the standards case as in the no-new-standards case in the year after the expected compliance date of the new and amended standards. The implicit assumption behind this scenario is that the industry can only maintain its operating profit in absolute dollars after the standard takes effect.

A comparison of industry financial impacts under the two manufacturer markup scenarios is presented in section V.B.2.a of this document.

3. Discussion of MIA Comments

a. Conversion Costs

In response to the October 2023 NOPR, NAMA commented the industry would incur hundreds of thousands to millions in capital costs when incorporating increased insulation, VIPs, heavier doors, and microchannel coils, which will take place in an environment with rising interest rates. (NAMA, No. 85 at p. 10) NAMA requested that DOE consider fully burdened conversion costs for the following areas: mold cost for plastic parts; production of the molds in molding machines; fixtures for production of metal parts; fixtures to hold the components in place; engineering design changes; manufacturing changes; building of prototypes to test internally; testing of prototypes; building of pre-production units from production parts and fixtures (sometimes called a pilot lot); safety certification for pre-production units; safety certification costs from U.S. Department of Labor Occupational Safety and Health Administration (''OSHA'') nationally recognized test laboratories (''NRTLs''); internal costs for performance testing; external costs for performance testing; internal energy testing; energy testing from outside laboratories for confirmation; training of production employees; training of service personnel; equipment for service personnel; and capital costs amortized over 3 to 5 years. (*Id.* at p. 22)

NAFEM stated some CRE models can be redesigned to achieve a lower energy limit within the 3-year timeline, while others (primarily self-contained products) have unknown design challenges and variable-speed evaporators and/or condenser fan motors and variable-speed compressors and all the extra electronic controls required for these variable-speed components will require extensive testing to accommodate the proposed limits to increase energy efficiency. (NAFEM, No. 83 at p. 12)

AHRI commented that microchannel condensers should include supplier tooling costs, existing and potential tariffs, laboratory testing, field testing, product line changeovers, refrigerant charge, and air flow analysis. (AHRI, No. 81 at p. 12) Hoshizaki commented that changing condensers requires manufacturers to purchase new jigs for brazing patterns where the cost of the jigs depends on the size and complexity. (Hoshizaki, No. 76 at p. 5) Hoshizaki stated jigs for brazing can cost thousands and costs for new condensing units are amortized over the first 3 years of purchase. (*Id.*) Hoshizaki commented that there are increased labor costs for variable-speed compressors because they require fine-tuning of design controls for optimum energy use. (*Id.*)

NAFEM commented that each foam fixture can cost between $250,000 and $750,000 depending on size and complexity, so new foam fixtures are multi-million-dollar investments. (NAFEM, No. 83 at p. 19) NAFEM also stated complex control systems require wiring, sensors, and additional assembly. (*Id.*)

In response to these comments, DOE notes that it incorporates investments in research, development, testing and certification, marketing, and other non-capitalized costs necessary to make equipment designs comply with standards (*i.e.,* product conversion costs) and investments in property, plant, and equipment necessary to adapt or change existing production facilities (*i.e.,* capital conversion costs) into its MIA. For the October 2023 NOPR, DOE analyzed incorporating a range of design options, including microchannel condensers, variable-speed compressors, and improved door designs (*i.e.,* moving to double-pane, triple-pane, or vacuum-insulated glass for CRE equipment classes with transparent doors). However, DOE did not consider increased insulation thickness or VIPs as design options in its engineering analysis as DOE had tentatively screened out those technology options due to ''impacts on product utility''. See section IV.B of this document for additional information.

For this final rule, DOE maintains the approach used in the August 2024 NODA. Specifically, based on stakeholder comments to the October 2023 NOPR, DOE revised its baseline component assumptions and revised its assessment of representative insulation thickness for the August 2024 NODA and this final rule to align with the insulation thickness assumptions used in the March 2014 Final Rule.[130] As such, DOE did not incorporate estimates associated with increasing insulation

[128] The gross-margin percentage of 29 percent is based on a manufacturer markup of 1.40.

[129] The gross-margin percentage of 28 percent is based on a manufacturer markup of 1.38.

[130] See Table 5A.2.2 Baseline Specifications in the March 2014 Final Rule TSD at *www.regulations.gov/document/EERE-2010-BT-STD-0003-0102*. DOE updated the following insulation thicknesses: 1.5 in. for medium- and high-temperature equipment, 2.0 in. for low-temperature equipment, and 2.5 in. for ice-cream temperature equipment. Table IV.11 in this document.

thickness or VIPs in its conversion costs for this final rule. As discussed in section IV.B.1.g of this document, DOE screened out the use of microchannel condensers as a design option to improve efficiency in this final rule analysis. Thus, consistent with the August 2024 NODA, DOE does not consider investments associated with implementing microchannel condensers in its MIA for this final rule. Consistent with both the August 2024 NODA and 2023 October NOPR, DOE assumed that implementing variable-speed compressors takes an additional level of engineering effort and testing time compared to other design options based on manufacturer feedback from confidential interviews. See chapter 12 of the final rule TSD for industry conversion costs by efficiency level for each directly analyzed equipment class.

Hussmann commented that design changes may lead to incorporating additional components (*e.g.,* EEVs, case controllers, lighting controls, anti-sweat heater controllers), which would negatively impact production rates and plant capacity if equipment becomes more difficult to assemble. (Hussmann, No. 80 at p. 8) Hussmann and AHRI commented that manufacturers would also have to develop new training materials and programs to educate existing technicians on the integration of these additional electronic components. (*Id.* at p. 8; AHRI, No. 81 at p. 10)

DOE understands that incorporating additional components could require additional sub-assembly stations and increase per-unit production time, potentially impacting plant capacity. DOE clarifies that EEVs, case controllers, and anti-sweat heater controls are not design options analyzed in this final rule, although DOE understands that manufacturers can choose to meet the adopted standards using a variety of different technologies. Furthermore, DOE does not expect that TSL 3 efficiencies would necessitate the use of occupancy sensors with dimming capability. Additionally, DOE notes that manufacturers have 4 years after this final rule publishes in the **Federal Register** to update CRE designs and production facilities to comply with the adopted standards. As such, DOE does not expect the CRE industry would face long-term capacity constraints as a direct result of the standards adopted in this final rule. As discussed in section V.B.2.c of this document, DOE assesses potential impacts of standards on manufacturing capacity. Manufacturers primary concern was about the dual development needed to comply with both new and amended energy conservation standards and EPA refrigerant regulations over a similar timeframe, however, DOE expects that extending the compliance period from the 3-years analyzed in the October 2023 NOPR to 4-years in this final rule will help mitigate these concerns about laboratory and engineering resource constraints. Regarding developing new training material for technicians, DOE's product conversion costs are intended to encompass investments in marketing and other non-capitalized expenses that directly result from meeting new or amended standards.

NAMA commented that DOE's consultants did not account for the enormous capital costs of most design options or the enormous cumulative burden that results from the transition from high-GWP refrigerants to low-GWP refrigerants. (NAMA, No. 85 at p. 10) NAMA also commented that the practice of burying capital costs in a separate category and not accounting for them in the true cost of design options is unrealistic. (*Id.* at p. 11)

In response to the comment from NAMA, DOE notes that it accounts for the capital investments required to implement the design options analyzed in the engineering analysis in its industry cash flow model, the GRIM. DOE also notes that it does not expect manufacturers would incur significant capital conversion costs as a result of the standards in this final rule as DOE is not analyzing capital-intensive design options such as increasing insulation thickness or implementing VIPs in its analysis. See section IV.J.2.c of this document for a discussion of conversion cost methodology and section V.B.2.a of this document for estimated capital conversion costs required to meet each TSL.

Regarding DOE's accounting of the investments required to transition to low-GWP refrigerants in response to Federal and State regulations, DOE accounts for the investments required to transition to low-GWP refrigerants in its GRIM in the no-new-standards case and standards case. DOE did not consider these investments as ''conversion costs'' as they are considered as part of the analytical baseline. In other words, the CRE industry would incur refrigerant transition expenses to comply with the October 2023 EPA Final Rule regardless of whether DOE amends energy conservation standards for CRE. Although refrigerant transition costs are not attributable to this DOE rulemaking, DOE incorporates these expenses into its GRIM to better reflect the state of industry finances and annual cash flow.

For the October 2023 NOPR, DOE relied on manufacturer feedback in confidential interviews, a report prepared for EPA,[131] results of the engineering analysis, and investment estimates submitted by NAMA and AHRI in response to the June 2022 Preliminary Analysis to estimate the industry refrigerant transition costs. 88 FR 70196, 70284. Based on feedback, DOE assumed that the transition to low-GWP refrigerants would require industry to invest approximately $21.3 million in R&D and $33.3 million in capital expenditures (*e.g.,* investments in new charging equipment, leak detection systems, *etc.*) from 2023 to 2025.[132] *Id.* DOE estimates industry would incur approximately $13.6 million in R&D and $17.7 million in capital expenditures from 2024 to 2027 for this final rule.[133] These values reflect the estimated refrigerant transition expenses incurred during the period analyzed in this final rule (*i.e.,* 2024–2058), and not the cumulative industry investments associated with transitioning to low-GWP refrigerants. DOE addresses stakeholder comments about the costs associated with the refrigerant transition in section IV.J.3.f of this document. These stakeholder comments relate to concerns about underestimating the costs associated with the refrigerant transition. For more detailed information on how DOE accounts for the refrigerant transition in its MIA, see section V.B.2.e of this document.

NAFEM asserted that DOE did not account for the substantial and unprecedented inflation and cost-of-capital issues that are plaguing all private enterprise at this time, including the CRE industry, in its October 2023 NOPR. (NAFEM, No. 83 at p. 14) NAFEM emphasized that the current macroeconomic environment makes short-term or long-term borrowing for capital improvements impossible. (*Id.* at p. 17) NAMA similarly commented that high interest rates make large investments—such as the expenses required to transition to low-GWP refrigerants in response to Federal and State refrigerant regulation—very expensive. (NAMA, No. 85 at p. 3)

[131] See pp. 5–113 of the ''Global Non-CO_2 Greenhouse Gas Emission Projections & Marginal Abatement Cost Analysis: Methodology Documentation'' (2019). Available at *www.epa.gov/sites/default/files/2019-09/documents/nonco2_methodology_report.pdf.*

[132] At the time of the October 2023 NOPR analysis, the December 2022 EPA NOPR proposed a compliance date of January 1, 2025 for all subsectors relevant to CRE covered by this rulemaking.

[133] The October 2023 EPA Final rule maintained a January 1, 2025 compliance date for stand-alone units but delayed compliance to January 1, 2026 or January 1, 2027 for other subsectors relevant to CRE covered by this rulemaking.

For the October 2023 NOPR, DOE used the discount rate (*i.e.,* the weighted average cost of capital) from the March 2014 Final Rule as a starting point for the MIA. The March 2014 Final Rule financial parameters were vetted by multiple manufacturers in confidential interviews and went through public notice and comment. DOE then compared the discount rate developed for the prior CRE rulemaking to recent financial data from four publicly traded CRE manufacturers to ensure relevance. DOE presented the discount rate and other financial parameters to manufacturers during confidential interviews conducted in January 2023 in advance of the October 2023 NOPR. See chapter 12 of the October 2023 NOPR TSD.[134] Based on feedback, DOE used a discount rate of 10.0 percent in its MIA conducted for the October 2023 NOPR. 88 FR 70196, 70246. As DOE did not receive quantitative feedback from manufacturers on the discount rate in response to the October 2023 NOPR, DOE maintained a discount rate of 10.0 percent for the August 2024 NODA and for this final rule. Regarding DOE's accounting of inflation, for this final rule, DOE updated its engineering analysis to incorporate up-to-date cost estimates by way of 5-year moving averages for materials and the most up-to-date costs for purchased parts.

In response to the October 2023 NOPR, Hillphoenix commented that the standards proposed in the October 2023 NOPR, if adopted, would force OEMs to discontinue equipment, noting that the March 2014 Final Rule standards (which went into effect in 2017) eliminated less-efficient models that were offered as part of tiered efficiency-based pricing. (Hillphoenix, No. 77 at p. 1) In response to the October 2023 NOPR and August 2024 NODA, Hillphoenix commented that proposed standards may lead to equipment commoditization where equipment can only compete on price rather than value-added options and features. (Hillphoenix, No. 77 at p. 1; Hillphoenix, No. 110 at p. 1) In response to August 2024 NODA, Hillphoenix similarly commented that the proposed standards would force OEMs to discontinue models, which would have negative business impacts, stifle innovation, lead to commoditization, and lead to a disadvantage selling in foreign markets. (Hillphoenix, No. 110 at p. 1)

With respect to the comment from Hillphoenix, DOE acknowledges that not all models on the market would meet the efficiency levels proposed in the October 2023 NOPR or the efficiency levels adopted in this final rule. As discussed in section IV.J.2.c of this document, DOE used its CCD as a key input to its conversion cost methodology to estimate the number of unique basic models that would require redesign for each directly analyzed equipment class at each efficiency level. To avoid underestimating the potential investments, DOE assumed manufacturers would redesign all models that would not currently meet each analyzed efficiency level. As such, industry conversion costs reflect the redesign effort required to update the portion of CRE models that do not meet each efficiency level.

In the October 2023 NOPR, DOE estimated that approximately 11 percent of shipments would meet the proposed levels by the analyzed compliance year. However, DOE estimates that approximately 49 percent of shipments would meet the levels adopted in this final rule (*i.e.,* TSL 3). Therefore, compared to the October 2023 NOPR, fewer models would require redesign to meet the adopted TSL in this final rule. Furthermore, compared to the October 2023 NOPR, manufacturers will have an additional year to redesign CRE to meet new and amended standards. Based on stakeholder feedback, DOE is extending the compliance period from the 3 years analyzed in the October 2023 NOPR to 4 years. DOE also notes that in the October 2023 NOPR, DOE proposed energy use multipliers for certain features (*e.g.,* pass-through doors, sliding doors, roll-in doors, roll-through doors, and forced air evaporators). 88 FR 70196, 70231. As presented in the August 2024 NODA, in this final rule, DOE is adopting a simplified multiplier of 1.07 to the eligible equipment classes discussed in the October 2023 NOPR. See section IV.C.1.a of this document for a discussion of equipment classes with unique energy use characteristics. As such, DOE expects that these types of features and others would remain prevalent in the market and could offer means for equipment differentiation, minimizing the risk of equipment commoditization. Additionally, DOE notes that it is not adopting the max-tech efficiency level for most directly analyzed equipment classes. Out of the 28 directly analyzed equipment classes, DOE is adopting efficiency levels below max-tech for 18 classes, which account for approximately 84 percent of industry shipments covered by this rulemaking. DOE expects that manufacturers would still be able to differentiate their models and product lines by various factors (*e.g.,* price, technologies, consumer features, energy efficiency) rather than just price as Hillphoenix contended in its comment. Furthermore, as discussed in section IV.C.1.b of this document, there are a range of models on the market and certified in DOE's CCD that exceed the analyzed max-tech efficiency levels. Possible explanations for the variability in energy usage could be due to a range of lighting powers, differences in insulation thickness, and use of evaporator fan controls, among other reasons.

b. Impacts on Direct Employment

In response to the October 2023 NOPR, Continental commented it may discontinue equipment, potentially affecting Continental employees, if the standards proposed in the October 2023 NOPR were implemented. (Continental, No. 86 at p. 6) AHRI commented that proposed standards in the October 2023 NOPR would force domestic manufacturers to exit the market, effectively lessening consumer choice. (AHRI, No. 81 at p. 15) NAMA commented that a large CRE manufacturer recently closed a factory and reduced company output, resulting in job loss. (NAMA, No. 85 at p. 4)

NAFEM added that the costs and complexity of adopting technology like variable-speed compressors would lead to cost and price increases, which in turn would impede the ability to compete against other equipment, particularly from foreign manufacturers who benefit from government subsidies. (NAFEM, No. 83 at p. 18) NAFEM commented its members continue to share their concerns about the substantial manufacturing costs and investments necessary to comply with the October 2023 NOPR. (*Id.* at p. 19)

In response to the August 2024 NODA, Delfield commented that if standards reduce equipment offerings, manufacturers may reduce their workforce, negatively impacting local communities where manufacturers are major employers. (Delfield, No. 99 at p. 1)

With respect to these comments, DOE notes that it analyzes the potential impacts to domestic manufacturing employment in section V.B.2.b of this document. DOE's direct employment analysis explores the potential reduction in employment under the standards cases (*i.e.,* each TSL) relative to the estimated employment absent standards (*i.e.,* the no-new-standards case). As discussed in section V.B.2.b of this document, DOE estimates that the potential change in domestic direct employment could range from −4,404 to −93 in 2029 at TSL 3. The upper

[134] Available at *www.regulations.gov/document/EERE-2017-BT-STD-0007-0051.*

bound of domestic employment represents the potential change in domestic production and non-production workers if manufacturers continue to produce the same scope of CRE in the United States after compliance. The lower bound estimate conservatively assumes that some domestic manufacturing either is eliminated or moves abroad at more stringent efficiency levels. DOE estimates that approximately 77 percent of CRE covered by this rulemaking are produced domestically. DOE notes that, compared to the October 2023 NOPR, the levels adopted are less stringent (in terms of percent energy use reduction from the analyzed baseline) for 22 out of the 28 directly analyzed equipment classes. These 22 equipment classes account for approximately 96 percent of industry shipments covered by this final rule. In the October 2023 NOPR, DOE estimated that approximately 11 percent of CRE shipments would meet the proposed standards by 2028, a year before the analyzed compliance year. Comparatively, DOE estimates that approximately 49 percent of CRE shipments would meet the standards adopted in this final rule by the analyzed compliance date. Based on a review of its CCD and market research conducted in support of its direct employment analysis, DOE understands that a range of OEMs with domestic CRE manufacturing facilities already offer models that meet the efficiency levels adopted in this final rule. Specifically, DOE identified 30 OEMs with domestic manufacturing facilities that sell the five highest shipments volume equipment classes (VCS.SC.L, VCS.SC.M, VCT.RC.M, VCT.SC.L, and VCT.SC.M). Of those 30 OEMs, only 3 manufacturers do not have any models that meet TSL 3. Approximately half of these 30 OEMs, including the largest CRE manufacturer (in terms of sales volume), currently make CRE exclusively in domestic production facilities.

c. Laboratory Resource Constraints

In response to the October 2023 NOPR, NAFEM, Hoshizaki, SCC, Hillphoenix, Hussmann, and AHRI all expressed concerns that third-party laboratories already have backlogs and are experiencing delays, meaning that new and amended standards for CRE could exacerbate the issue and require more internal testing and third-party testing. (NAFEM, No. 83 at pp. 12–13; Hoshizaki, No. 76 at p. 2; SCC, No. 74 at p. 1; Hillphoenix, No. 77 at p. 3; Hussmann, No. 80 at p. 1; AHRI, No. 81 at p. 2) SCC stated that there is a 3-to-6-month backlog at NRTLs from the October 2023 EPA Final Rule and UL safety standards. (SCC, No. 74 at p. 1) SCC commented that estimates are up to several years just for certification of a manufacturer's full catalog, and testing for UL 60335–2–89 will extend the time needed to test and comply for each CRE model family using new refrigerants. (*Id.* at pp. 1, 2)

In response to the August 2024 NODA, Hussmann commented amendments to UL/CSA 60335–1 and 60335–2–89 requires critical resources, laboratory space, and time. Hussmann stated that these amendments would potentially extend UL approval time by up to 14 weeks. (Hussmann, No. 108 at p. 2) In response to the October 2023 NOPR and August 2024 NODA, Hussmann commented that the backlog at NRTLs will lead to certification delays both for its equipment and components from its suppliers. (Hussmann, No. 80 at p. 1; Hussmann, No. 108 at p. 1) Hillphoenix stated that changes to CRE designs require OEMs to retest to standards from DOE, UL, NSF, ASHRAE, and AHRI. (Hillphoenix, No. 77 at p. 3) In response to the August 2024 NODA, Hillphoenix commented the industry is concerned with the availability of NRTLs to meet proposed standard, regulations from EPA AIM Act, and safety standard UL 60335–2–89, and manufacturers are using significant portions of engineering, supply chain resources, manufacturing, and marketing to meet regulations. (Hillphoenix, No. 110 at p. 2) In response to the October 2023 NOPR, Hoshizaki commented that the refrigerant changes required by 2026, energy conservation standards for ACIMs and CRE by 2027–2028, the new UL safety standard, and NSF sanitation testing for new ice-making systems will push its testing laboratories to capacity, requiring Hoshizaki to rely on third-party laboratories for safety testing. (Hoshizaki, No. 76 at p. 6)

AHRI stated that manufacturers are currently switching to low-GWP refrigerants, and DOE rulemakings increase pressure on laboratory availability, testing capacity, and component availability. (AHRI, No. 81 at p. 2) AHRI stated manufacturers are facing regulatory burdens of DOE rulemakings for ACIMs and WICFs, the October 2023 EPA Final Rule, UL 60335–89–2 and UL 60335–4–40 safety standards, and PFAS regulations, all of which constrain manufacturers' engineering resources, testing validation, verification time, and sourcing components, and constrain independent laboratory testing from low-GWP refrigerants. (*Id.* at pp. 2, 5) AHRI further asserted that EPA and DOE rulemakings regulations pose a high risk for manufacturers to be unable to meet all requirements in the required timeframes. (*Id.* p. 2) AHRI commented that conversion of CRE to larger refrigerant charges over 150 grams is a significant, design-intensive process spanning multiple years and requiring project management, product management, industrial engineering, maintenance, quality, finance, marketing, design engineering, and compliance. (*Id.* at p. 14) AHRI commented that, as of September 29, 2024, new CRE can only be certified to UL 60335–2–89 and any significant equipment modifications for each model family must be certified to UL 60335–2–89—including to CRE using A2L refrigerant or an A3 refrigerant with charge larger than 150 grams. (*Id.* at pp. 2, 5) AHRI stated that manufacturers' third-party national laboratories for UL 60335–2–89 require special sensory equipment that will further limit laboratory capabilities and double the testing time of larger units. (*Id.* at p. 14) Specifically, AHRI commented that laboratory testing time for larger-charged units will double from less than 1 week to nearly 2 weeks, with additional testing required, including end-use lower-flammability limit component testing, annex CC testing, and vibration testing. (*Id.* pp. 14–15)

Hoshizaki commented that UL safety standard 60335–2–89 requires extensive review of refrigeration equipment, which will increase testing and approval time for each model. (Hoshizaki, No. 76 at p. 2) Hoshizaki elaborated that manufacturers will need more testing equipment, testing time, and training for engineers. (*Id.*) Hoshizaki commented that changes to safety and energy testing have more than doubled the testing time for each model family as a result of UL safety standards, Intertek safety certification, and ASHRAE 29 and 72 standards. (*Id.* at p. 6) Hoshizaki requested that DOE investigate if NRTLs are expanding to meet the higher testing demand for the use of flammable refrigerants. (*Id.*) Hoshizaki commented that manufacturers will need additional time to complete all the necessary testing involved for CRE that require redesign as a result of new and amended standards due to the existing ''backlog'' of third-party laboratories. (*Id.* at pp. 1–2) Hoshizaki commented that more than 100 of its CRE models will be affected by the energy conservation standards proposed in the October 2023 NOPR, and corresponding UL safety and NSF sanitation testing will be difficult or impossible to complete within the 3-year compliance period. (*Id.* at pp. 6–7)

In response to the August 2024 NODA, NAMA acknowledged DOE's assessment of the increased testing costs associated with new UL safety standards. (NAMA, No. 112 at p. 5) NAMA asserted that the cost of DOE testing for energy efficiency will increase noting that 2 units need to be tested. (*Id* at p. 6).

Hussmann commented that compliance to UL 60335–2–89 uses critical resources, laboratory space, and time for new components and design modifications. (Hussmann, No. 80 at p. 2) Hussmann asserted that its testing laboratories and personnel are at capacity. (*Id.* at p. 1) In the October 2023 NOPR and August 2024 NODA, Hussmann commented manufacturers will commit 1 to 3 years of laboratory time and significant resource investment to test to UL standards when evaluating the performance of new A3 or A2L components from the October 2023 EPA Final Rule. (*Id.* at p. 2; Hussmann, No. 108 at p. 1) Hillphoenix commented that UL 60335–2–89 requires all new CRE to be certified if using most end-uses of A2Ls and larger charges or R–290, which requires more testing, equipment markings, instructions, and modifications to meet the safety requirements. (Hillphoenix, No. 77 at p. 3) Hillphoenix commented that UL 60335–2–89 requires significantly more testing potentially and substantial modifications to meet the safety requirements. (*Id.*) Hillphoenix commented that each time equipment changes, OEMs must retest to all of these regulations and specific test standards, and there is substantial industry concern over the availability of NRTLs to meet the evolving regulatory landscape. (*Id.*) Hillphoenix stated that a significant portion of engineering, supply chain, manufacturing, and marketing resources are being consumed just to meet these evolving regulations. (*Id.*)

NAFEM commented that the standards proposed in the October 2023 NOPR would require extensive testing for the CRE industry, which is problematic due to bottlenecks related to changing safety and environmental regulations at third-party testing laboratories. (NAFEM, No. 83 at p. 12)

With respect to these comments, DOE understands that complying with concurrent EPA and DOE regulations, compounded by changes to UL safety standards and industry test standards, requires a significant amount of engineering and laboratory resources for CRE manufacturers. Regarding the redesign, testing, and certification required to develop CRE designs that comply with the October 2023 EPA Final Rule, DOE accounts for those refrigerant transition expenses incurred during the analysis period (2024 to 2058) in its MIA. DOE recognizes that many CRE manufacturers also manufacture WICFs and ACIMs, as shown in table V. in section V.B.2.e of this document. DOE notes that the compliance dates in the October 2023 EPA Final Rule are staggered for these equipment categories across multiple years, rather than having a single January 1, 2025 compliance date as proposed in the December 2022 EPA NOPR. Staggering compliance dates could lessen potential bottlenecks in the transition to manufacture new equipment, such as testing and certification of equipment by an NRTL. See 88 FR 73098, 73133. For WICFs, the October 2023 EPA Final Rule established GWP restrictions for refrigeration systems with remote condensing units in retail food refrigeration systems and cold storage warehouses with less than 200 pounds (''lbs'') of charge, effective January 1, 2026. See *id.* at 88 FR 73209. The October 2023 EPA Final Rule established GWP restrictions for ACIMs effective January 1, 2026 or January 1, 2027, depending on the ACIM equipment category. See *id.* at 88 FR 73165. Regarding potential DOE standards for WICFs and ACIMs, DOE notes that it issued a final rule amending standards for WICFs on November 29, 2024, with compliance required for WICF refrigeration systems starting December 31, 2028 (approximately 1 year later than what was proposed, see 88 FR 60746).[135] At this time, DOE has proposed but has not finalized new and amended standards for ACIMs. See 88 FR 30508. In this final rule, DOE is adopting a 4-year compliance period (modeled as a 2029 compliance year), providing manufacturers an additional year compared to the October 2023 NOPR to complete the necessary testing and redesign needed to meet the adopted standards. As such, DOE expects that any energy conservation standards compliance dates for CRE, WICFs, and ACIMs (should DOE adopt more stringent standards) will be staggered.

Regarding stakeholders' comments on the increase in per-unit testing burden as a result of the transition to UL 60335–2–89, DOE updated its product conversion costs to reflect the increase in testing burden. As discussed in section IV.J.2.c of this document, DOE doubled the costs associated with testing and certifying to the new UL safety standard in response to written comments and secondary research.

d. Supply Chain

In response to the October 2023 NOPR, NAMA asserted that DOE has not addressed the lack of available components in the supply chain. (NAMA, No. 85 at p. 15) Hoshizaki, Hussmann, and AHRI commented that manufacturers experience long lead times and shortages of components, including electronic controls, fan motors, compressors, sheet metal, and plastic resin. (Hoshizaki, No. 76 at pp. 5–6; Hussmann, No. 80 at p. 13; AHRI, No. 81 at pp. 12–13) Hussmann and AHRI commented that COVID–19 impacted the supply chain for computer chips and, while the situation is improving, shortages and long lead times for electrical components, materials, and parts remain. (Hussmann, No. 80 at p. 13; AHRI, No. 81 at pp. 12–13) In response to the August 2024 NODA, Hussmann commented that the industry faces supply chain issues related to A2L components, standard supply chain issues prevalent since COVID–19, time constraints, resource constraints, and laboratory capacity limitations, and a learning curve to understand new baseline energy usage. (Hussmann, No. 108 at p. 2) In response to the October 2023 NOPR, AHRI commented that supply chain issues for electrical components requires that CRE OEMs continually redesign equipment to adapt to new electronic controls. (AHRI, No. 81 at p. 13) AHRI added that manufacturers experience high component prices; uncertainty around PFAS regulations; long lead times for variable-speed compressors, variable-speed fans, variable-speed drives, system controllers, and ECMs; electronic component redesign; backlogs for components to certify to both UL 60335–2–40 and UL 60335–2–89; time for sourcing alternative components; and additional reliability testing of new components. (*Id.*)

Hussmann commented that electronic component shortages forced a supplier to discontinue several fan motors and assemblies, abandon adjustable-speed motors in ''Insight Merchandisers'',[136] and source EEVs and case controllers, taking several months, which constrains engineering resources. (Hussmann, No. 80 at p. 13) Hussmann also commented that computer chips and controller shortages have resulted in $10,000 in

[135] At the time of issuance of this final rule, the WICFs final rule has been issued and is pending publication in the **Federal Register**. Once published, the final rule pertaining to WICFs will be available at: *www.regulations.gov/docket/EERE-2017-BT-STD-0009.*

[136] *www.hussmann.com/en/products/display-cases/insight-merchandisers#p=48.* (Last accessed October 8, 2024).

laboratory costs to conduct reliability testing, performance validation testing on CRE cases, and UL and NSF testing and validation. (*Id.* at pp. 1, 13) Hussmann stated that more shortages may occur if more controllers or computer chips are required to meet proposed standards, particularly if the United States imposes a ban on semi-conductors from China (Section 5949 of the National Defense Authorization Act). (*Id.* at p. 13)

In response to the August 2024 NODA, Delfield commented the proposed standards would have a significant impact on manufacturers in terms of testing, development, and overall business resources, which may negatively impact equipment availability. (Delfield, No. 99 at p. 1) Delfield stated that if the supply chain is not equipped for all most manufacturers to move to new tooling and components, it could result in production delays. (*Id.*)

In response to comments about supply chain issues, DOE notes that for the August 2024 NODA and this final rule, DOE updated its engineering analysis to incorporate up-to-date cost estimates. Increased costs associated with recent supply chain challenges stemming from the COVID–19 pandemic have been incorporated into the cost analysis by way of 5-year moving averages for materials and up-to-date costs for purchased parts. DOE expects manufacturers would most likely incorporate design options that require more electronic components (*e.g.,* ECMs, variable-speed compressors) to meet the standards adopted in this final rule. However, based on the engineering and teardown analyses as well as comments from manufacturers (see AHRI, No. 81 at pp. 4–5; Delfield, No. 71 at p. 1; Hussmann, No. 80 at p. 10), DOE understands that the use of advanced electronics (*e.g.,* EC fan motors and controls for fans) is already prevalent in the CRE industry. For this final rule, DOE expects that 10 directly analyzed equipment classes, which account for 50 percent of self-contained CRE shipments (approximately 43 percent of total industry shipments), would likely need to incorporate variable-speed compressors to meet TSL 3. However, for those 10 equipment classes, 30 percent of shipments already meet TSL 3 efficiencies. Additionally, as discussed in section III.A.2.a of this document, DOE is extending the compliance period from 3-years analyzed in the October 2023 NOPR to 4-years for this final rule. The 4-year compliance period provides some economic and regulatory certainty to component suppliers and manufacturers, which eases supply constraints on components that manufacturers may need in order to meet the new and amended standards.

e. Cumulative Regulatory Burden

In response to the October 2023 NOPR, AHRI appreciated that DOE recognizes the cumulative regulatory burden associated with regulatory initiatives of multiple Federal agencies and standards-setting bodies, which includes DOE energy conservation standards for CRE, WICF, and ACIM rulemakings occurring simultaneously with refrigerant regulation such as the October 2023 EPA Final Rule, and changes to UL safety standards, State regulations, *etc.* (AHRI, No. 81 at pp. 13–14) AHRI commented that all these regulatory actions entail costs, engineering design time, testing validation and verification time, establishment of new supply chains, and independent laboratory testing. (*Id.* at p. 14) AHRI commented also that DOE's proposed changes to medium electric motors and expanded-scope electric motors (''ESEMs'')—formerly named small non-small electric motors—in 2027 would also have an impact on CRE manufacturers and may require equipment changes to account for larger motors, additional testing, safety agency approval, backward compatibility for the replacement market, and cost increases for higher-efficiency motors. (*Id.*) AHRI stated that these factors make DOE's 3-year compliance period analyzed in the October 2023 NOPR infeasible, as meeting the standards would require substantial investment, resources, and innovation by manufacturers. (*Id.*) Hussmann commented that it incorporated by reference AHRI's comment that there is a cumulative regulatory burden associated with the October 2023 NOPR. (Hussmann, No. 80 at p. 14) Hussmann similarly emphasized that the motors rulemakings could also impact CRE manufacturers. (*Id.*)

Hoshizaki commented that ACIM and CRE regulations have converging compliance dates for new safety regulations, the refrigerant transition, and DOE energy conservation standards. (Hoshizaki, No. 76 at p. 6) Hoshizaki added that industry is still trying to understand the scope of change needed for the transition to UL 60335–2–89, which is required for most commercial refrigeration categories starting in September 2024. (*Id.*) Hoshizaki commented that it is also tracking the development of chemical (*e.g.,* PFAS) regulations. (*Id.* at p. 7)

SCC similarly commented that the cumulative regulatory burden from EPA refrigerant regulations, new safety standards, DOE's ACIM and WICF energy conservation standards rulemakings, and PFAS reporting make it challenging to analyze and comply with these regulations within the required timeframes. (SCC, No. 74 at pp. 1, 4) SCC emphasized that each rulemaking requires significant engineering time, capital costs, testing validation, and independent laboratory certification. (*Id.* at p. 4) SCC commented that 3 years is an insufficient amount of time to comply with the standards proposed in the October 2023 NOPR, given the cumulative regulatory burden from overlapping rulemakings. (*Id.*)

Hussmann highlighted that many State and local building codes prohibit the use of A2Ls and must be updated outside of the normal cycle of building code revisions, which commonly take 2 to 5 years to complete. (Hussmann, No. 80 at p. 2) Hussmann commented only eight States have updated their codes to allow A2L refrigerants in CRE, and more than 20 States and all U.S. territories have not yet passed legislation authorizing the use of A2L refrigerants for CRE. (*Id.*) Hussmann commented that manufacturers currently face uncertainty around the use of A2L but stated that AHRI is dedicating resources to allow A2Ls in CRE in all States and territories to allow A2Ls in building codes by mid-2024. (*Id.; see also* AHRI, No. 81 at p. 2) In response to the August 2024 NODA, NAMA requested that DOE consider the regulatory burden associated with changing State and local building codes. NAMA commented that National, State, and local building codes may not be finalized before the proposed compliance date for CRE. (NAMA, No. 112 at pp. 4, 9) If building codes are not updated, NAMA asserted that manufacturers may build two versions of models with either R–290 refrigerants or a blend of low-GWP refrigerants and higher-GWP refrigerants. (*Id.* at p. 4)

In response to the October 2023 NOPR and August 2024 NODA, Hussmann commented that it faces simultaneous UL 60335–2–89, NSF, FDA, EPA, and DOE rulemakings, as well as issues related to A2L supply chain, other supply chain issues, time constraints, resource constraints, retooling costs, investments for R&D for CRE and walk-in refrigerators and freezers, and laboratory and capacity limitations. (Hussmann, No. 80 at p. 2 and Hussmann, No. 108 at p. 1) NAFEM commented that its members face overlapping regulations from Federal,

State, local, and industrial authorities: the October 2023 EPA Final Rule will have an impact on energy efficiency, UL 60335–2–89 will have a multi-year impact, equipment must meet NSF sanitation requirements, and all equipment must comply with ASHRAE safety requirements. (NAFEM, No. 83 at p. 16) NAFEM commented that many CRE manufacturers must also accommodate changes in ACIMs during a similar timeframe. (*Id.* at p. 13) NAMA commented the industry has experienced regulatory pressure for 5 years, citing DOE's March 2014 Final Rule with compliance in 2017, new ENERGY STAR levels, State-level refrigerant regulations, COVID–19, inflation, and labor shortages for skilled workers. (NAMA, No. 85 at pp. 3–4) In response to the October 2023 NOPR and August 2024 NODA, NAMA commented that cumulative regulatory burden should include changes necessary to adhere to local and State building codes. (NAMA, No. 85 at p. 18 and NAMA, No. 112 at p. 7) NAMA stated California, Oregon, Washington, and other States have changed refrigerant regulations, including retiring HFC refrigerants. (NAMA, No. 85 at p. 17)

With respect to comments regarding the regulatory burden, DOE recognizes that the CRE industry faces overlapping regulations from Federal, State, local, and industrial entities. DOE analyzes and considers the impact on manufacturers of multiple product/equipment-specific Federal regulatory actions. DOE analyzes cumulative regulatory burden pursuant to section 13(g) of the Process Rule. 10 CFR 431.4; 10 CFR 430, subpart C, appendix A, section 13(g). DOE notes that regulations not yet finalized (*e.g.,* DOE energy conservation standards for ACIMs and BVMs) are not considered as cumulative regulatory burden, as the timing, cost, and impacts of unfinalized rules are speculative. However, to aid stakeholders in identifying potential cumulative regulatory burden, DOE does list rulemakings that have proposed rules with tentative compliance dates, compliance levels, and compliance cost estimates. The results of this analysis can be found in section V.B.2.e of this document. As shown in table V.67 in section V.B.2.e of this document, DOE considers the potential cumulative regulatory burden from other DOE energy conservation standards rulemakings for a range of DOE rulemakings, including WICFs, in this final rule analysis. DOE also considers the cost to comply with the October 2023 EPA Final Rule in its analysis. DOE estimates industry will need to invest $13.6 million in R&D and $17.7 million in capital expenditures to transition to low-GWP refrigerants over the next 2 years.

Regarding the comments about EPA's ENERGY STAR levels, DOE notes that participating in ENERGY STAR is voluntary and not considered in DOE's analysis of cumulative regulatory burden. Regarding the comments about updates to State and local building codes allowing A2L refrigerants in CRE, DOE understands that building codes can limit refrigerants available for use in certain end-uses, including CRE, based on their flammability, the charge size of the equipment, and other relevant safety factors. Building codes are established at the subnational level and can differ greatly across jurisdictions. DOE understands that, in some cases, jurisdictions still need to update their building codes for some substitutes to be available for certain uses. Subsection (i)(4)(B) of the AIM Act, codified at 42 U.S.C. 7675, directs EPA, to the extent practicable, to take building codes into account in its consideration of availability of substitutes when establishing refrigerant restrictions. As such, the October 2023 EPA Final Rule considered whether current building codes permit the installation and use of equipment and systems using substitutes, particularly with respect to setting compliance dates for refrigerant restrictions. As discussed in the October 2023 EPA Final Rule, EPA found it reasonable to consider that jurisdictions will prioritize completing the necessary updates with the October 2023 EPA Final Rule compliance dates in mind. 88 FR 73098, 73135–73136. For many subsectors, including remote condensing CRE equipment classes, the October 2023 EPA Final Rule provided additional time to comply with refrigerant restrictions as compared to the December 2022 EPA NOPR to enable jurisdictions to update their building codes or legislation accordingly. *Id.* at 88 FR 73136. DOE notes that the compliance dates detailed in the October 2023 EPA Final Rule for categories relevant to CRE are 2 to 4 years earlier than the compliance date for new and amended CRE energy conservation standards. As such, DOE anticipates that building codes should not impact a manufacturer's ability to transition to A2L refrigerants by the DOE compliance year. See section IV.C.1.a of this document for additional discussion on building codes.

Regarding the ESEM proposed rule published on December 15, 2023, DOE expects that CRE covered by the ESEM rulemaking would not be directly impacted because the motors used in CRE are typically below 0.25 horsepower, and, thus, are outside the scope of the ESEM rulemaking. See 88 FR 87062. Furthermore, as DOE did not identify any CRE manufacturers that also manufacture ESEMs, DOE did not include CRE manufacturers in the ESEM proposed rule in its cumulative regulatory burden analysis. Regarding potential PFAS regulations restricting the use of certain A2L refrigerants, DOE notes that EPA has not yet proposed any regulations concerning the use of PFAS in refrigerants. DOE notes that EPA's ''PFAS Strategic Roadmap'' sets timelines for specific actions and outlines EPA's commitments to new policies to safeguard public health, protect the environment, and hold polluters accountable.[137]

Regarding State refrigerant regulations, those transition costs are reflected in the refrigerant transition costs estimated in this final rule (see section V.B.2.e of this document). DOE notes that two States have established GWP limits for certain remote-condensing CRE that are lower (*i.e.,* more restrictive) than the October 2023 EPA Final Rule for some CRE categories. Specifically, California and Washington prohibited refrigerants with a GWP of 150 or greater for new retail food refrigeration equipment containing more than 50 lbs refrigerant, which includes certain self-contained and remote-condensing CRE, as of January 1, 2022 in California [138] and as of January 1, 2025 in the State of Washington.[139] Because CRE connected to a remote condensing unit can be connected to multiple types of remote condensing systems with varying refrigerant charge sizes (*e.g.,* dedicated condensing unit or compressor rack system), and State regulations align with the most restrictive GWP limit in the October 2023 EPA Final Rule for CRE, DOE does not expect that individual State refrigerant regulations would further contribute to refrigerant transition costs beyond what was assessed for the October 2023 EPA Final Rule for the equipment covered by this final rule. DOE is already basing its engineering analysis on the most restrictive GWP

[137] U.S. Environmental Protection Agency, ''Per- and Polyfluoroalkyl Substances (PFAS).'' Available at: *www.epa.gov/pfas* (last accessed October 23, 2024).

[138] California Air Resource Board, ''California Significant New Alternatives Policy (SNAP).'' Available at *ww2.arb.ca.gov/our-work/programs/california-significant-new-alternatives-policy-snap/retail-food-refrigeration* (last accessed May 23, 2024).

[139] State of Washington Department of Ecology, WAC 173–443–040. Available at *app.leg.wa.gov/WAC/default.aspx?cite=173-443-040* (last accessed May 23, 2024).

limit (*i.e.,* 150 GWP) to account for the potential variation in remote condensing system refrigerant charge sizes.

In response to the October 2023 NOPR and August 2024 NODA, NAMA commented that DOE should investigate the cumulative burden of the ongoing BVM rulemaking and combine the costs of compliance with multiple regulations into the product conversion costs and GRIM spreadsheets to reflect the costs of responding to and monitoring regulations. (NAMA, No. 85 at pp. 17–18; NAMA, No. 112 at p. 8) NAMA added the GRIM does not show recoupment of investments from multiple product regulations within the six-year lock-in period and recommends DOE consolidate analysis for multiple regulations. (NAMA, No. 112 at p. 8)

Regarding incorporating the combined product conversion costs from the BVM rulemaking into the CRE GRIM (and vice versa), DOE is concerned that combined results would make it more difficult to discern the direct impact of a new or amended standard on covered manufacturers, particularly for rulemakings where there is only partial overlap of manufacturers, which is the case for BVMs and CRE. The GRIM prepared for this rulemaking is specific to the CRE industry. Inputs to the GRIM such as annual shipments, production costs, conversion costs, cost structure, discount rate, *etc.,* reflect the CRE industry. As such, MIA results only encompass industry revenue and annual cash flow associated with shipments of CRE covered by this specific rulemaking. If DOE were to combine the conversion costs from multiple regulations into the CRE GRIM, as requested, it would be appropriate to also include the combined revenues of the relevant regulated products or equipment. For rulemakings with only a partial overlap of manufacturers, conversion costs would be spread over a larger revenue base and result in less severe INPV impacts when evaluated on a percent change basis. For instance, of the 5 BVM manufacturers and of the 103 CRE manufacturers, only 1 manufacturer makes both BVMs and CRE.

In response to the October 2023 NOPR, Zero Zone expressed concern about the third segment of the AIM Act, which regards managing HFC use and reuse. (Zero Zone, No. 75 at p. 1) Zero Zone commented that this proposed regulation has requirements for leak detection and repair that would increase the purchase and operating cost of refrigerating equipment, and the phasedown of HFC refrigerant will increase the cost of equipment for stores. (*Id.*) Zero Zone commented that those cost changes in addition to the costs of design changes to meet the proposed energy conservation standard will reduce overall industry sales volume, which would be detrimental to manufacturers. (*Id.*)

On October 19, 2023, EPA published a proposed rule in the **Federal Register** to address and control certain activities regarding the servicing, repair, disposal, or installation of equipment that involves HFCs or their substitutes. 88 FR 72216. On October 11, 2024, EPA finalized its proposed rule. 89 FR 82682. DOE anticipates that EPA's rule may necessitate additional components or design changes (*e.g.,* automatic leak detection) in certain CRE covered by this rulemaking. Zero Zone's comment did not quantify the increase in cost to CRE within the scope of this final rule. However, DOE expects that any costs associated with complying with EPA's rule would apply to relevant CRE models at all efficiency levels regardless of the energy conservation standard adopted in this final rule. Because the cost impacts from EPA's rule are not efficiency-related costs but rather would be incurred due to EPA requirements that are applicable at all efficiency levels, DOE has not considered the impacts of these changes on MPCs in this final rule. See section IV.C.2 of this document for additional information on DOE's cost analysis.

f. Refrigerant Transition

In response to the October 2023 NOPR, NAFEM commented that the October 2023 NOPR fundamentally ignores the context of other significant changes impacting the CRE industry at this time. (NAFEM, No. 83 at p. 16) NAFEM commented that DOE is not accounting for the significant capital and other investments that were made, and continue to be made, in the shift to new refrigerants under the AIM Act. (*Id.* at p. 15) NAFEM asserted that DOE's analysis does not account for manufacturers trying to recover the costs of these substantial investments made to comply with the October 2023 EPA Final Rule. (*Id.*) NAFEM commented that, contrary to the information in the October 2023 NOPR, the changeover to natural refrigerants is underway but not complete in the CRE industry, mostly because necessary capital improvements are extremely expensive, far more than those listed in the October 2023 NOPR TSD. (*Id.*)

AHRI commented that manufacturers have delayed their refrigerant transition due to COVID–19, component shortages, and long lead times. (AHRI, No. 81 at p. 8) AHRI stated that equipment designs will be impacted by the October 2023 EPA Final rule, which will go into effect in 2025 for self-contained equipment classes and 2026 or 2027 for remote condensing equipment classes. (*Id.*) AHRI commented that DOE did not include any increase in capital costs for the conversion from R–404A to R–290 refrigerant in the baseline assessment. (AHRI, No. 81 at p. 7)

In response to both the October 2023 NOPR and August 2024 NODA, NAMA commented that the CRE industry is burdened by the ongoing transition to low-GWP refrigerants and new safety standards, which require capital improvements to factories, changes to service, and training of factory employees. (NAMA, No. 85 at p. 4; NAMA, No. 112 at p. 5) In particular, NAMA commented that DOE underestimated the capital costs associated with transitioning to low-GWP refrigerants. (*Id.* at pp. 4, 8) NAMA commented also that while the October 2023 NOPR TSD acknowledges the need to change multiple components, the product and capital costs shown are far below what manufacturers must incur to fully implement the use of A3 refrigerants. (NAMA, No. 85 at pp. 7–8)

NAMA stated that the costs of converting to alternative, low-GWP refrigerants has cost millions of dollars for its members, which has been particularly challenging since sales have been down and labor and materials costs have increased. (NAMA, No. 85 at p. 35) NAMA stated its belief that the cost of the refrigerant transition has diverted business resources. (*Id.* at p. 3) NAMA asserted that the cost of the refrigerant transition is higher than the estimated amount in the October 2023 NOPR TSD, especially due to current interest rates, which increase the cost of short-term and long-term borrowing. (*Id.*) NAMA commented that new or amended energy conservation standards from DOE would increase the time to transition CRE to low-GWP refrigerants due to supply chain issues and limited staffing for some manufacturers. (*Id.* at p. 8)

In response to the October 2023 NOPR and August 2024 NODA, Hussmann commented that complying with the October 2023 EPA Final rule necessitates changes to its manufacturing processes, retooling of equipment, and R&D investment. (Hussmann, No. 80 at p. 1; Hussmann No. 108 at p. 1) Hussmann commented that there are supply chain constraints surrounding sourcing components for CRE using A2L refrigerants since components are pending third-party regulatory compliance. (*Id.*) Hussmann stated that because A2L components are

new, components must be purchased, designed, installed in models, and undergo performance and safety validation. (*Id.*) Hussmann stated A2L components also require UL certification. (Hussmann, No. 108 at p. 1) Hussmann commented that its costs of transitioning one factory to low-GWP refrigerants included: $700,000 for engineering resources, $500,000 in testing, $600,000 in laboratory equipment, $10,000 in certification costs, $300,000 in manufacturing efforts for self-contained equipment, and $500,000 for manufacturing equipment for self-contained equipment. (Hussmann, No. 80 at p. 15) In response to the August 2024 NODA, the CA IOUs agreed with DOE's analysis that manufacturer R&D costs will increase due to the revised compliance dates for CRE from the October 2023 EPA final rule. (CA IOUs, No. 113 at p. 2)

In response to the comments from NAFEM, AHRI, NAMA, the CA IOUs and Hussmann, DOE recognizes that redesigning CRE models to comply with EPA's refrigerant regulation and DOE's new and amended energy conservation standards requires significant engineering resources and capital investment. DOE analyzed the potential impacts of the December 2022 EPA NOPR in its October 2023 NOPR. Based on the December 2022 EPA NOPR, DOE modeled the CRE industry transitioning to low-GWP refrigerants prior to EPA's proposed January 1, 2025 compliance date. However, EPA has since finalized refrigerant restrictions affecting CRE (*i.e.,* the October 2023 EPA Final rule). The October 2023 EPA Final rule prohibits the manufacture or import of self-contained CRE with HFCs and HFC blends with GWPs of 150 or greater starting January 1, 2025 (for the CRE covered by this rulemaking). For other CRE covered by this rulemaking, the October 2023 EPA Final rule adopted later compliance dates of January 1, 2026 or January 1, 2027 based on equipment type.

DOE notes that it accounts for industry refrigerant transition expenses in its GRIM in the no-new-standards case and standards cases because investments required to transition to low-GWP refrigerants in response to the October 2023 EPA Final Rule likely necessitates a level of investment beyond typical annual R&D and capital expenditures. DOE incorporates these expenses into its GRIM as part of the analytical baseline to better reflect the state of industry finances and annual cash flow. For the October 2023 NOPR, DOE relied on a range of sources, including feedback gathered during confidential manufacturer interviews and investment estimates submitted by NAMA and AHRI in response to the June 2022 Preliminary Analysis. In response to written comments to the October 2023 NOPR, DOE revised its refrigerant transition R&D estimates (see Hussmann, No. 80 at p. 15). DOE did not revise its estimates of refrigerant transition capital expenditures as stakeholder feedback aligned with the methodology used in the October 2023 NOPR. Based on these sources, DOE modeled the transition to low-GWP refrigerants would require industry to invest approximately $13.6 million in R&D and $17.7 million in capital expenditures (*e.g.,* investments in new charging equipment, leak detection systems, *etc.*) from 2024 (the final rule reference year) and 2027 (the latest EPA compliance date for CRE covered by this rulemaking). However, DOE acknowledges that many manufacturers have made significant investments to transition to low-GWP refrigerants prior to 2024, which would not reflected in the GRIM as those costs were incurred outside of the analysis period for this rulemaking (2024–2058). See section V.B.2.e of this document for additional discussion of how DOE accounts for cumulative regulatory burden in its analysis. DOE incorporated the potential redesign costs (*i.e.,* product conversion costs) and capital investment (*i.e.,* capital conversion costs) needed to meet various standard levels in its MIA. See section IV.J.2.c of this document for additional discussion of conversion costs.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional GHG, CH_4 and N_2O, as well as the reductions in emissions of other gases due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of electric power sector emissions of CO_2, NO_X, SO_2, and Hg uses emissions intended to represent the marginal impacts of the change in electricity consumption associated with amended or new standards. The methodology is based on results published for the *AEO,* including a set of side cases that implement a variety of efficiency-related policies. The methodology is described in appendix 13A in the final rule TSD. The analysis presented in this document uses projections from *AEO2023.* Power sector emissions of CH_4 and N_2O from fuel combustion are estimated using Emission Factors for Greenhouse Gas Inventories published by EPA.[140]

FFC upstream emissions, which include emissions from fuel combustion during extraction, processing, and transportation of fuels, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2, are estimated based on the methodology described in chapter 15 of the final rule TSD.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. For power sector emissions, specific emissions intensity factors are calculated by sector and end use. Total emissions reductions are estimated using the energy savings calculated in the NIA.

1. Air Quality Regulations Incorporated in DOE's Analysis

DOE's no-new-standards case for the electric power sector reflects the *AEO,* which incorporates the projected impacts of existing air quality regulations on emissions. *AEO2023* reflects, to the extent possible, laws and regulations adopted through mid-November 2022, including the emissions control programs discussed in the following paragraphs the emissions control programs discussed in the following paragraphs, and the Inflation Reduction Act.[141]

SO_2 emissions from affected electric generating units (''EGUs'') are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (''DC''). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from numerous States in the eastern half of the United States are also limited under the Cross-State Air Pollution Rule (''CSAPR''). 76 FR 48208 (Aug. 8, 2011). CSAPR requires these States to reduce certain emissions, including annual SO_2 emissions, and went into effect as of January 1, 2015.[142] The *AEO*

[140] Available at *www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf* (last accessed July 22, 2024).

[141] For further information, see the ''Assumptions to *AEO2023*'' report that sets forth the major assumptions used to generate the projections in the Annual Energy Outlook. Available at *www.eia.gov/outlooks/aeo/assumptions/* (last accessed July 20, 2024).

[142] CSAPR requires States to address annual emissions of SO_2 and NO_X, precursors to the formation of fine particulate matter (''$PM_{2.5}$'')

incorporates implementation of CSAPR, including the update to the CSAPR ozone season program emission budgets and target dates issued in 2016. 81 FR 74504 (Oct. 26, 2016). Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, for States subject to SO_2 emissions limits under CSAPR, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by another regulated EGU.

However, beginning in 2016, SO_2 emissions began to fall as a result of the Mercury and Air Toxics Standards (''MATS'') for power plants.[143] 77 FR 9304 (Feb. 16, 2012). The final rule establishes power plant emission standards for mercury, acid gases, and non-mercury metallic toxic pollutants. Because of the emissions reductions under the MATS, it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation will generally reduce SO_2 emissions. DOE estimated SO_2 emissions reduction using emissions factors based on *AEO2023.*

CSAPR also established limits on NO_X emissions for numerous States in the eastern half of the United States. Energy conservation standards would have little effect on NO_X emissions in those States covered by CSAPR emissions limits if excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other EGUs. In such cases, NO_X emissions would remain near the limit even if electricity generation goes down. Depending on the configuration of the power sector in the different regions and the need for allowances, however, NO_X emissions might not remain at the limit in the case of lower electricity demand. That would mean that standards might reduce NO_X emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO_X emissions in States covered by CSAPR. Standards would be expected to reduce NO_X emissions in the States not covered by CSAPR. DOE used *AEO2023* data to derive NO_X emissions factors for the group of States not covered by CSAPR.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would be expected to slightly reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO2023,* which incorporates the MATS.

L. Monetizing Emissions Impacts

As part of the development of this final rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO_2, CH_4, N_2O, NO_X, and SO_2 that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of equipment shipped during the projection period for each TSL. This section summarizes the basis for the values used for monetizing the emissions benefits and presents the values considered in this final rule.

1. Monetization of Greenhouse Gas Emissions

To monetize the climate benefits of reducing GHG emissions, the October 2023 NOPR used the interim social cost of greenhouse gases (''SC–GHG'') estimates presented in the Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990 published in February 2021 by the Interagency Working Group on the SC–GHG (''IWG'') (''2021 Interim SC–GHG estimates''). As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agreed that the 2021 interim SC–GHG estimates represented the most appropriate estimate of the SC–GHG until revised estimates were developed reflecting the latest, peer-reviewed science. See 87 FR 78382, (Dec. 21, 2022) 78406–78408 for discussion of the development and details of the 2021 interim SC–GHG estimates. The IWG has continued working on updating the interim estimates but has not published final estimates.

Accordingly, in the regulatory analysis of its December 2023 Final Rule, ''Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review,'' the Environmental Protection Agency (''EPA'') estimated climate benefits using a new, updated set of SC–GHG estimates (''2023 SC–GHG estimates''). EPA documented the methodology underlying the new estimates in the RIA for the December 2023 Final Rule and in greater detail in a technical report entitled ''Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances'' (''Final Report'') that was presented as Supplementary Material to the RIA. The 2023 SC–GHG estimates address the recommendations of the National Academies of Science, Engineering, and Medicine (National Academies) by incorporating recent research and responses to public comments. The public comments include those on an earlier sensitivity analysis contained in EPA's December 2022 proposal in the oil and natural gas sector standards of performance rulemaking along with comments on a 2023 external peer review of the accompanying technical report.

On December 22, 2023, the IWG issued a memorandum directing that when agencies ''consider applying the SC–GHG in various contexts . . . agencies should use their professional judgment to determine which estimates of the SC–GHG reflect the best available evidence, are most appropriate for particular analytical contexts, and best facilitate sound decision-making'' consistent with OMB Circular A–4 and applicable law.

DOE has been extensively involved in the IWG process and related work on the SC–GHGs for over a decade. This involvement includes DOE's role as the Federal technical monitor for the seminal 2017 report on the SC–GHG issued by the National Academies, which provided extensive recommendations on how to strengthen and update the SC–GHG estimates. DOE has also participated in the IWG's work since 2021. DOE technical experts involved in this work reviewed the 2023 SC–GHG methodology and report in light of the National Academies' recommendations and DOE's

pollution, in order to address the interstate transport of pollution with respect to the 1997 and 2006 $PM_{2.5}$ National Ambient Air Quality Standards (''NAAQS''). CSAPR also requires certain States to address the ozone season (May–September) emissions of NO_X, a precursor to the formation of ozone pollution, in order to address the interstate transport of ozone pollution with respect to the 1997 ozone NAAQS. 76 FR 48208 (Aug. 8, 2011). EPA subsequently issued a supplemental rule that included an additional five States in the CSAPR ozone season program, 76 FR 80760 (Dec. 27, 2011) (Supplemental Rule), and EPA issued the CSAPR Update for the 2008 ozone NAAQS. 81 FR 74504 (Oct. 26, 2016).

[143] In order to continue operating, coal power plants must have either flue gas desulfurization or dry sorbent injection systems installed. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions.

understanding of the state of the science.

Based on this review, in the August 2024 NODA, DOE proposed for public comment its preliminary determination that the updated 2023 SC–GHG estimates, including the approach to discounting, represent a significant improvement in estimating the SC–GHG through incorporating the most recent advancements in the scientific literature and by addressing recommendations on prior methodologies. That NODA presented climate benefits using both the 2023 SC–GHG estimates and the 2021 interim SC–GHG estimates. In this final rule, DOE has not made a final decision regarding that preliminary assessment or adoption of the updated 2023 SC–GHG estimates, as such a decision is not necessary for purposes of this rule. In this final rule, DOE is presenting estimates using both the updated 2023 SC–GHG values and the 2021 interim SC–GHG estimates, as DOE believes it is appropriate to give the public more complete information regarding the benefits of this rule. DOE notes, however, that the adopted standards would be economically justified using either set of SC–GHG values, and even without inclusion of the estimated monetized benefits of reduced GHG emissions. In future rulemakings, DOE will continue to evaluate the applicability in context and use our professional judgment to apply the SC–GHG estimates that are most appropriate to use at that time.

The 2023 EPA technical report presents SC–GHG values for emissions years through 2080; therefore, DOE did not monetize the climate benefits of GHG emissions reductions occurring after 2080 when using the 2023 estimates for the SC–GHG. DOE expects additional climate impacts to accrue from GHG emissions changes post 2080, but due to a lack of readily available SC–GHG estimates for emissions years beyond 2080 and the relatively small emission effects expected from those years, DOE has not monetized these additional impacts in this analysis. Similarly, the 2021 interim SC–GHG estimates include values through 2070. DOE expects additional climate benefits to accrue for products still operating after 2070, but a lack of available SC–GHG estimates published by the IWG for emissions years beyond 2070 prevents DOE from monetizing these potential benefits in this analysis.

The overall climate benefits are generally greater when using the higher, updated 2023 SC–GHG estimates, compared to the climate benefits using the older 2021 interim SC–GHG estimates, which were used in the July 2023 NOPR. The net benefits of the rule are positive, however, under either SC–GHG calculation methodology; in fact, the net benefits of the rule are positive without including any monetized climate benefits at all. The adopted standards would be economically justified even without inclusion of the estimated monetized benefits of reduced GHG emissions using either methodology, therefore the conclusions of the analysis (as presented in section V.C of this document) are not dependent on which set of estimates of the SC–GHG are used in the analysis or on the use of the SC–GHG at all. The adopted standard level would remain the same under either SC–GHG calculation methodology (or without using the SC–GHG at all).

DOE received several comments regarding its preliminary determination on the use of the 2023 SC–GHG methodologies in the August 2024 NODA. As noted above, DOE is not making a final determination regarding which of the two sets of SC–GHG is most appropriate to apply here. Accordingly, DOE is not addressing in this rule comments regarding such a final determination. Because DOE is presenting results using both sets of estimates, however, to the extent that commenters raised concerns about any reference to the 2023 SC–GHG methodologies, DOE is responding to that limited set of comments here.

Commenter Pacific Gas & Electric (PG&E) et al. expressed support for the 2023 update on SC–GHG methodologies and for use of these estimates in DOE policy analysis. (PG&E et al., No. 113 at p. 2). PG&E et al. stated that the use of the 2023 SC–GHG methodologies is consistent with the Office of Management and Budget (OMB) recommendations to use the best and most recent available estimates for calculating the social cost of carbon. (PG&E et al., No. 113 at p. 2).

Commenters Hussman Corporation, American Lighting Association (ALA) et al., Competitive Enterprise Institute (CEI), and National Association of Home Builders (NAHB) expressed general opposition to the use of a metric that monetizes carbon emissions, and they criticized especially the use of the 2023 SC–GHG methodologies. (Hussman Corporation, No. 108 at p. 3; ALA et al., No. 109 at p. 2; NAHB, No. 103 at p. 4). NAHB stated that, ''the monetized value of [SC–GHG] is highly esoteric, is not tied to tangible outcomes, and will not lead to real change intended in the EERE mission and priorities.'' NAHB further requested that DOE limits its use of SC–GHG in the future and not use it as a metric for setting minimum efficiency criteria. (NAHB, No. 103 at p. 4) Commenter (CEI) stated that SC–GHG is not a valid approach to monetizing impacts from emissions.

DOE acknowledges the comments expressing general opposition to the 2023 SC–GHG methodologies and their use in these policy analyses. In this final rule, DOE is presenting SC–GHG results using both the interim 2021 SC–GHG estimates and the updated 2023 SC–GHG estimates. DOE notes again that it would promulgate the same standards in these final rules even in the absence of the benefits of the GHG reductions achieved by the rule.

Some commenters (NAHB, ALA, et al., and the U.S. Chamber of Commerce et al.) argued that there is a significant lack of clarity as to how the methodology was applied and how the results were produced. Overall, commenters requested more transparency within the modeling process. Commenter (ALA et al.) affirmed that it may be appropriate for DOE to examine the SC–GHG and monetization of other emissions reductions benefits as informational if the underlying analysis is transparent and vigorous and reviewed by properly qualified peer reviewers. However, ALA maintained that the benefits calculated with the SC–GHG should not be used to justify a rule given the uncertain and ever-evolving nature of those estimates. (ALA et al., No. 109 at pp. 3–4)

Commenter (U.S. Chamber of Commerce et al.) stated that the December 22, 2023, IWG memo ''lacked any discussion of the methodologies, assumptions, or models used by the EPA in revising the estimates.'' U.S. Chamber of Commerce further criticized that while EPA provided some technical documentation in support of its new SG–GHG estimates, the overall lack of transparency within the decision-making process undermines the credibility of the estimates. The group also stated that the IWG memo does not direct agencies which values to use, allowing agencies to use any estimate, which would lead to inconsistent use of the SC–GHG estimates across the government. (U.S. Chamber of Commerce et al., No. 115 at p. 3)

Because DOE is presenting climate benefits using both the 2021 interim SC–GHG estimates and the 2023 SC–GHG estimates without relying on either set of values to justify its standards, we do not address the substance of these comments insofar as they assess the relative merits of the two sets of estimates. Insofar as these comments object to DOE even referring to the 2023 SC–GHG estimates and using them for informational purposes, DOE notes that

EPA made documentation available in support of the draft updated 2023 SC–GHG estimates used in the sensitivity analysis in EPA's December 2022 Regulatory Impact Analysis, as well as in support of the final updated SC–GHG estimates used in EPA's Dec. 2023 Final Rule. This includes the final technical report explaining the methodology underlying the new set of SC–GHG estimates, files to support independent replication of the SC–GHG estimates, a workbook to support members of the public in applying the SC–GHG estimates in their own analyses, public comments relating to SC–GHG estimates as part of the December 2022 RIA, EPA responses to those public comments, and extensive documentation on the peer review process, including information about the public input opportunities in the peer review panel selection process, the selected peer reviewers, a recording of the peer review meeting, the peer reviewers' report, and EPA's responses to the peer reviewers' report. EPA additionally provided copies of all studies and reports cited in the analysis in the public docket. (EPA RTC A–7–4).

Regarding commenter's concerns regarding IWG's lack of discussion of the 2023 SC–GHG methodologies, insofar as this comment objects to DOE even referring to the 2023 SC–GHG estimates and using them for informational purposes, DOE notes that the methodologies were not introduced in the IWG memo, but rather in an EPA proposed and final rule and a Final Report. The IWG's lack of discussion does not appear to be relevant.

With respect to the commenter's concern about the potential for different agencies to use different and therefore inconsistent estimates of the SC–GHG, this comment is not directly relevant because DOE is presenting both the 2021 interim SC–GHG estimates and the 2023 SC–GHG estimates for this rule.

Several commenters (CEI, AHRI, and U.S. Chamber of Commerce et al.) questioned the accuracy of the estimates produced by the 2023 SC–GHG methodologies and called attention to uncertainties in the calculation process. Commenters argue that due to what they view as substantial inaccuracies and uncertainties in the methodologies, they should not be used to justify new and more stringent energy conservation standards. Commenter (CEI) criticizes the 2023 SC–GHG methodologies as ''too speculative, too prone to user manipulation, and too reliant on dubious assumptions to either justify regulatory decisions or estimate their net benefits to the public.'' (CEI1, No. 100 at p. 2; CEI2, No. 102 at p. 10)

Commenter (AHRI) stated that the methodology fails to acknowledge uncertainties and extrapolations regarding the climate modeling and interaction of the four modules. Additionally, AHRI criticized the quantification of the benefits claimed by DOE as ''speculative and tangential at best.'' (AHRI, No. 104 at p. 2)

Commenter (U.S. Chamber of Commerce et al.) identified the scientific underpinnings of the methodologies as a key area of concern. The U.S. Chamber of Commerce claimed that the SC–GHG values are ''inherently uncertain because they depend on complex modeling of future economic and environmental impacts—and not just near-term forecasts, but forecasts that project hundreds of years into the future.'' (U.S. Chamber of Commerce et al., No. 115 at p. 4)

Because DOE is presenting climate benefits using both the 2021 interim SC–GHG estimates and the 2023 SC–GHG estimates without relying on either set of values to justify its standards, we do not address comments on the uncertainty in the 2023 SC–GHG estimates insofar as they assess the relative merits of the two sets of estimates. Insofar as these comments object to DOE even referring to the 2023 SC–GHG estimates and using them for informational purposes, DOE notes that some measure of uncertainty is inherent in all complex cost estimates that quantify physical impacts and translate them into dollar values. Moreover, DOE notes that EPA discussed the uncertainty in various aspects of the 2023 SC–GHG estimates, including how it is directly accounted for in each of the modules, in the Final SC–GHG Report, and pointed to discussions of uncertainty in the supporting academic literature. (See, *e.g.,* EPA Report at p. 77; EPA RTC A–1–7). EPA discussed factors not accounted for in the SC–GHG, such as those represented in table 3.2.1, explicitly acknowledged that there are limits on which damages and impacts the analysis can capture due to data and modeling limitations, and analyzed the omitted damages and modeling limitations, including the net directional changes of the omitted impacts.

Commenter (CEI) criticized the EPA report's lack of ''table, chart, or paragraph explaining which factors contribute what percentage of the more than threefold increase in social cost—despite the more than two-thirds reduction in emission baselines.'' CEI noted that the reduced discount rate is one factor, but not the entire explanation for the increase in SC–GHG values. (CEI2, No. 102 at p. 8)

Because DOE is presenting climate benefits using both the 2021 interim SC–GHG estimates and the 2023 SC–GHG estimates without relying on either set of values to justify its standards, we do not address the substance of this comment insofar as it calls for a comparison of the relative merits between the two sets of estimates. For informational purposes, DOE notes that EPA stated in the Final Report that the increases in the 2023 SC–GHG estimates are due to the combined effect of multiple methodological updates, and because some of these updates are integrated, a complete decomposition of the incremental contribution of each change is difficult for all three damage functions used in the damage module. (EPA Report at p. 102; EPA RTC A–5–25).

Multiple commenters (National Automatic Merchandising Association (NAMA) and U.S. Chamber of Commerce et al.) raised concerns about whether the new methodologies were sufficiently peer-reviewed by independent experts before DOE utilized them in its analyses. Commenter (NAMA) argued that the updated SC–GHG methodologies deserve an ''open discussion'' with increased transparency before they are used in regulatory action. NAMA specifically claimed that ''the updated IWG report'' that the DOE cites in its analyses was never fully peer-reviewed and was not part of an open process. (NAMA, No. 112 at p. 4) Commenter (U.S. Chamber of Commerce et al.) similarly criticized the IWG's lack of transparency and stated that it undermined the credibility of the updated methodologies and raised questions as to whether the estimates were subject to appropriate scrutiny and review. (U.S. Chamber of Commerce et al., No. 115 at pp. 2–3)

Insofar as commenters were referring to the EPA report—and further insofar as this comment objects to DOE even referring to the 2023 SC–GHG estimates and using them for informational purposes—DOE notes that these commenters referred to the SC–GHG methodologies ''in the IWG report,'' but DOE is not aware of any report by the IWG concerning the 2023 SC–GHG estimates. There is a December 2023 IWG memo referencing developments in the scientific literature, as well as a February 2021 IWG Technical Support Document that provided Interim SC–GHG estimates, but the December 2023 memo does not introduce any new methodologies. The 2023 SC–GHG estimates were not introduced in the IWG memo but rather in an EPA rule and Final Report.

EPA stated that the 2023 SC–GHG methodologies were subjected to independent peer review in line with EPA's Peer Review Handbook 4th Edition, 2015 and described the process. (EPA RTC A–7–10).

Several commenters (CEI, NAHB, AHRI, U.S. Chamber of Commerce et al., and American Enterprise Institute (AEI)) raised concerns with the discount rates employed in the 2023 SC–GHG methodologies and the substantial consequences of utilizing such rates. Commenters (CEI, NAHB, and AEI) criticized the disproportionate impact that the choice of a lower discount rate had on the end SC–GHG estimates. Commenter (AEI) specifically denounced the ''artificially low'' rates and maintained that the rates are a result of prioritizing only climate effects and not wealth aggregation, which would more realistically reflect the objectives of each generation. (CEI2, No. 102 at p. 9; NAHB, No. 103 at p. 4; AEI at pp. 8–9) Commenters (AHRI and U.S. Chamber of Commerce et al.) further criticized the rate choices in the methodologies as inconsistent throughout the cost-benefit analysis. Commenters also questioned why such rates were chosen for each context, especially with such significant impact. (AHRI, No. 104 at p. 4; U.S. Chamber of Commerce et al., No. 115 at p. 4)

Because DOE is presenting climate benefits using both the 2021 interim SC–GHG estimates and the 2023 SC–GHG estimates without relying on either set of values to justify its standards, we do not address comments on the discounting approach used in the 2023 SC–GHG estimates insofar as they assess the relative merits of the two sets of estimates. Insofar as these comments object to DOE even referring to the 2023 SC–GHG estimates and using them for informational purposes, DOE notes that EPA stated that the introduction of a Ramsey approach rather than a constant interest rate ensures internal consistency within the modeling between the socio-economic scenarios and the discount rate and allows for a more complete accounting of uncertainty. (EPA Report at pp. 63–64; EPA RTC A–5–13). EPA further stated that it selected the rates based on multiple lines of evidence: historical real rates of returns, empirical studies of equilibrium real interest rates, future projections of real interest rates, and surveys of economists and technical experts. (EPA Report at p. 2; EPA RTC A–5–24).

Commenter (CEI2) offered support for the updates to the emissions baseline utilized in the 2023 SC–GHG methodologies. Commenter noted that the new baseline of reduced carbon emissions is more realistic for climate modeling and the SC–GHG metric (CEI2, No. 102 at p. 3)

Multiple commenters (CEI and AEI) stated that the 2023 SC–GHG methodologies improperly continue to rely on Representative Concentration Pathway 8.5 (RCP 8.5) for climate models, despite EPA's switch to more realistic emissions baselines elsewhere in the analysis. Commenter (CEI) specifically stated that the 2023 SC–GHG updates rely on three damage functions based on RCP 8.5 and thus assume substantially greater warming and damage despite otherwise utilizing a lower emissions baseline. (CEI2, No. 102 at p. 9) Commenter (CEI) also noted concerns with the use of SSP3 and SSP5 as ''wildly implausible''. Commenter (AEI) similarly opposed the continued use of RCP 8.5 for damage functions and climate models and further criticized the inaccuracy of RCP 8.5 in general. Commenter stated that calculations relying on RCP 8.5 are so extreme, they are realistically impossible. (AEI, No. 97 at p. 4)

Because DOE is presenting climate benefits using both the 2021 interim SC–GHG estimates and the 2023 SC–GHG estimates without relying on either set of values to justify its standards, we do not address the substance of these comments on the emissions baseline insofar as they assess the relative merits of the two sets of estimates. Insofar as these comments object to DOE even referring to the 2023 SC–GHG estimates and using them for informational purposes, DOE notes that EPA's Final Report states that the updated 2023 SC–GHG estimates use a new methodology (not RCPs or SSPs (Shared Socio-economic Pathways)), to project future emissions scenarios. Per EPA, the new methodology is an internally consistent set of probabilistic projections of population, GDP, and GHG emissions to 2300, developed by expert elicitation (Rennert et al., ''The social cost of carbon: Advances in long-term probabilistic projections of population, GDP, emissions, and discount rates,'' 2022).

Commenters (Gas Analytics and Advocacy Services (GAAS) and AEI) stated that the 2023 SC–GHG methodologies fail to incorporate the environmental benefits of carbon emissions into the analyses. Commenters include planetary greening, increased agricultural productivity, increased water use efficiency, and reduced mortality from cold as potential benefits from increased GHG emissions. (GAAS, No. 96 at p. 6; AEI, No. 97 at pp. 7–8)

Because DOE is presenting climate benefits using both the 2021 interim SC–GHG estimates and the 2023 SC–GHG estimates without relying on either set of values to justify its standards, we do not address this comment insofar as it assesses the relative merits of the two sets of estimates. Insofar as this comment objects to DOE even referring to the 2023 SC–GHG estimates and using them for informational purposes, DOE notes that the Final Report states that carbon fertilization and changes to both heat and cold mortality are represented in the updated 2023 SC–GHG estimates (see EPA Report, table 3.2.1 at p. 87). EPA acknowledged that the analysis is not able to capture all impacts of GHG emissions (both positive and negative) due to data and modeling limitations.

Commenter (CEI) criticized the 2023 SC–GHG methodologies' integration of the mortality effects of climate change through metrics such as ''Value of Statistical Life'' (VSL). Commenter specifically took issue with the fact that VSL does not account for intergenerational externalities and instead focused on individuals as opposed to society as a whole. As a result, Commenter stated that the use of the metric encourages consumption at the expense of productive investment. (CEI1, No. 100 at pp. 2–3)

Because DOE is presenting climate benefits using both the 2021 interim SC–GHG estimates and the 2023 SC–GHG estimates without relying on either set of values to justify its standards, we do not address this comment insofar as it assesses the relative merits of the two sets of estimates. Insofar as this comment objects to DOE even referring to the 2023 SC–GHG estimates and using them for informational purposes, we note that in its cost-benefit guidance for Federal agencies, OMB endorses VSL as an approach to monetizing reductions in fatality risks, notes that for decades Federal agencies have consistently used VSL estimates, and cites EPA's VSL guidelines as an example. (OMB, Circular No. A–4, 49–50 (Nov. 9, 2023)). EPA's VSL methodology was also peer reviewed by its Science Advisory Board (EPA Report at pp. 1633–167; EPA RTC A–4–11). As an additional point of reference, DOE's methodology for determining the monetized benefits of reductions in SO_X and SO_2 emissions, as described in the TSDs accompanying the rule, are also based upon the EPA's benefit-per-ton (BPT) analysis of emissions reduction benefits that in turn are based upon the VSL approach. DOE also notes that the commenter incorrectly asserted that the incorporation of mortality effects is new

to the 2023 SC–GHG estimates. Previous estimates of SC–GHG also reflect willingness to pay to reduce mortality risk and in some cases also use VSL specifically.

A commenter (CEI1) stated that the characterization of SC–GHG estimates as monetized is misleading. Commenter asserted that calculations are measured in ''welfare'' rather than money and cannot be compared with other dollar values. Commenter also stated that SC–GHG estimates are ordinal rather than cardinal and therefore don't express degree of relative benefit. (CEI1, No. 100 at p. 4)

This comment goes to any SC–GHG estimates, not the 2023 SC–GHG estimates specifically. SC–GHG is a measure of aggregate willingness to pay, rather than utility as the commenter suggests. It does not measure how much utility changes as a result of additional emissions. Instead, SC–GHG measures how much income society could forgo today with a given emission reduction and be as well off as it would have been without such a reduction (EPA Report at p. 5, 94, and 163). This is a standard economic method for valuing nonmarket goods, and the calculations yield a dollar value, correctly labeled in dollars, for the benefits of emission reductions. This is a cardinal measure that can be compared with any other dollar value as part of a cost benefit analysis.

Commenter (CEI1) stated that because SC–GHG estimates were developed using a normative approach, specifically optimizing utility using a social welfare function, with a social planner framework, to determine how intergenerational impacts should be weighted, they are inconsistent with economic efficiency. (CEI1, No. 100 at p. 4)

This comment goes to all SC–GHG estimates, not the 2023 SC–GHG estimates. specifically.. DOE acknowledges that there are inherent uncertainties in capturing trade-offs over extended time periods. Both the interim 2021 SC–GHG estimates and the 2023 SC–GHG estimates are based on empirical evidence as described by the peer-reviewed literature (EPA Report at pp. 19–76), and both rely on a descriptive, rather than normative, approach to inform discount rate choices, which the IWG has found to be the most defensible and transparent (IWG, February 2010 Technical Support Document at p. 19; see EPA Report at pp. 62–64 for further discussion). This allows for discount rates to be chosen that are consistent with empirical evidence.

Commenter (AEI) stated that the Biden administration mischaracterizes the GDP effects of rising GHG concentrations in its 2023 SC–GHG methodologies. Commenter instead maintains that GDP data supports the contention that the prospective financial risks of anthropogenic climate change, at least in the aggregate, are much smaller than the SC–GHG estimates suggest. (AEI, No. 97 at p. 9)

As DOE is presenting climate benefits using both the interim 2021 SC–GHG estimates and the 2023 SC–GHG estimates without relying on either set of values to justify its standards, DOE does not address this comment insofar as it assesses the relative merits of the two sets of estimates. Insofar as this comment objects to DOE even referring to the 2023 SC–GHG estimates and using them for informational purposes, we note that Figure 2.1.2 in the EPA Final Report shows the projections of per capita GDP growth rate over the period 2020–2300, with the RFF–SP projections used in the 2023 SC–GHG estimates remaining at rates under 2 percent and the other scenarios ranging to just over 4 percent (EPA Report at p. 30). DOE further notes that GDP projections are not equivalent to total social cost, as they only measure economic output, while social cost aims to measure well-being, including many non-market factors that are impacted by climate change, such as human health. Commenters (AHRI and ALA et al.) cited the requirement in EPCA section 6295(o)(2)(B) for DOE to consider seven separate factors when evaluating whether a new or amended energy conservation standard is economically justified. Commenters stated that DOE's use of the SC–GHG metric dominated the economic justification analysis of the rule, effectively disregarding the other factors in violation of the statute. Commenter (AHRI) stated that the statutory text provides no indication one factor should be given more weight than others. (AHRI, No. 104 at p. 3) Commenter (ALA et al.) objected to DOE's ''reliance'' on the economic benefits produced by the 2023 SC–GHG methodologies and reiterated that DOE is required to balance EPCA's seven factors together. (ALA et al., No. 109 at pp. 3–4)

These comments largely go to use of any estimate of SC–GHG in this rulemaking. DOE has long included SC–GHG estimates in its economic justification analyses pursuant to section 6295(o)(2)(B)(i) of EPCA. In deciding if an energy conservation standard is economically justified under EPCA, DOE must consider, to the greatest extent practicable, seven statutory factors, including the need for national energy and water conservation. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)). Under that requirement, DOE estimates environmental and public health benefits associated with the more efficient use of energy. The adopted standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions and estimates the economic value of emissions reductions. DOE disagrees with commenters' assertion that the agency failed to adequately balance the other six factors in its analysis or that the SC–GHG metric (under either estimate) overpowers the other factors. DOE found that the standards would be economically justified—*i.e.,* meet the section 6295(o)(2)(B)(i) criteria—without taking any of the benefits of GHG emissions reductions (as calculated by either the 2023 SC–GHG estimates or the interim 2021 SC–GHG estimates) into account. DOE reiterates that the SC–GHG values are not determinative in this rulemaking as DOE would promulgate the same standards even in the absence of the estimated climate benefits (using either the 2021 or the 2023 calculation methodology).

Multiple commenters (NAHB, AHRI, and AEI) highlighted the global nature of the impacts and benefits represented in the 2023 SC–GHG estimates and deemed this inappropriate in the context of U.S. domestic policy and rulemaking.

Commenters (NAHB and AEI) criticized conflation of global and domestic metrics in the 2023 SC–GHG methodologies and stated that the inclusion of global metrics will incorrectly incentivize international and domestic climate measures. Commenters further predicted that the inclusion of global metrics will impose unnecessary costs on U.S. consumers and the domestic economy. Commenter (NAHB) asserted that this is a disproportional distribution of costs and benefits and is effectively a tax through regulation. (NAHB, No. 103 at p. 3; AEI, No. 97 at p. 7). Commenter (AHRI) stated that EPCA has a domestic focus and argued that to reframe EPCA into a globally oriented statute would ignore its legislative history and contradict its focus on benefits accruing solely within the United States. (AHRI, No. 104 at p. 2)

These comments go to both the interim 2021 SC–GHG estimates and the 2023 SC–GHG estimates. Both sets of

SC–GHG estimates reflect the global cost of climate change impacts given the distinctive global nature of the climate change problem. Numerous impacts of global climate change occur outside of U.S. territories that directly affect U.S. residents, U.S. companies, the U.S. economy, and U.S. national security and geopolitical interests. Also, if each country were to design emissions policies accounting for only the burdens inflicted on their own citizens and residents, none of the ''foreign'' impacts of emissions would be accounted for by any country and so all countries would under-regulate GHG emissions. This would, in turn, cause significant harm to U.S. citizens and residents.

DOE disagrees with commenter's contention that EPCA restricts DOE's estimates of the benefits of avoiding GHG emissions only to direct domestic benefits. The economic justification analysis under EPCA contains no such limiting language regarding consideration of global or domestic emissions benefits and burdens. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)). Also see *Zero Zone, Inc.* v. *United States DOE,* 832 F.3d 654, 678–79 (7th Cir. 2016) in which the Seventh Circuit Court of Appeals rejected a petitioner's challenge to DOE's use of a global social cost of carbon in setting an efficiency standard under EPCA and upheld DOE's consideration of global impacts in its climate analysis. In any event, comments on DOE's consideration of transboundary climate impacts are not ultimately relevant because, as stated above, the SC–GHG values are not determinative in this rulemaking and DOE would promulgate the same standards even in the absence of any climate benefits (domestic or global).

Commenter (AHRI) argued that DOE's use of the SC–GHG violates the Major Questions Doctrine. The commenter asserts that as the impact for the SC–GHG resulting from the proposed commercial refrigeration equipment rule was estimated at $671.4 million, the rule asserts a claim of authority concerning vast economic significance that Congress has not provided to it. AHRI maintained that EPCA did not provide DOE with clear authority to regulate emissions when evaluating new or amended standards and thus the inclusion of such analysis in the rulemaking violates the Major Questions Doctrine. (AHRI, No. 104 at p. 4)

Commenter (GAAS) similarly incorporated a ''Science Matters'' article into its comment citing a 2022 court case challenging the Federal government's use of SC–GHG as a violation of the Major Questions Doctrine. (GAAS, No. 96 at p. 4)

These comments go to any estimate of SC–GHG in the rule. DOE disagrees with commenters' assertion that the use of SC–GHG methodologies violates the Major Questions Doctrine. First, DOE reiterates that the rule does not rely on the monetized climate benefits and would be economically justified regardless of the inclusion of the climate benefits that DOE projects would result from the standards. Second, through EPCA, Congress has directed DOE to set energy conservation standards applicable to covered products and has explicitly required DOE to determine whether a standard is economically justified by determining ''whether the benefits of the standard exceed its burdens'' based on listed considerations. (42 U.S.C. 6295(o)) The economic benefit of pollution reductions is a standard metric in cost benefit analysis of actions that significantly affect emissions, as appliance efficiency standards typically do due to their statutory focus on energy conservation (and both grid electricity and natural gas combustion have associated emissions of GHGs and other air pollutants). All presidential administrations since the Reagan Administration have required agencies to conduct cost benefit analyses in their rulemakings and have strongly encouraged the monetization of impacts where possible. The interagency working group developed Federal SC–GHG estimates in 2010, and SC–GHG estimates have been used in Federal agencies rulemakings for over a decade. DOE itself has used SC–GHG estimates in its rulemakings and other analyses since 2009. It is, in fact, difficult to see how DOE could justify not calculating such benefits where possible. DOE's use of SC–GHG estimates to provide a monetary estimate of the benefits of the GHG emissions reductions that are projected to result from the adoption of these efficiency standards is consistent with the statutory requirements, best economic practices, government-wide cost benefit analysis guidance, longstanding Federal agency practices, data quality requirements, and current science. Additionally, it does not in any way assert a claim of authority concerning vast economic significance.

Regarding the comment about $671.4 million in SC–GHG benefits, the commenter appears to have misinterpreted this value as the benefits of SC–GHGs reductions of the proposed rule. In the proposed rule, at a 3% discount rate, the total benefits were estimated to be $1.25 billion, of which $174.4 million was attributed to climate benefits (calculated using the 2021 interim SC–GHG), $738 million was from consumer operating cost savings, and the remainder was health benefits of other emissions reductions. At a 7% discount rate, the total benefits were estimated to be $1 billion, of which $174.4 million was attributed to climate benefits (calculated using the 2021 interim SC–GHG),, $586 million was from consumer operating cost savings, and the remainder was health benefits from other emissions. The climate benefits were thus not even the rule's largest monetized impact, and this rulemaking would be economically justified regardless of the inclusion of either set of estimates of the GHG emissions reductions.

Several commenters (Hussman Corporation, ALA et al., NAMA, and GAAS) criticized DOE's decision to first include the 2023 SC–GHG estimates in a NODA for an individual rule. Commenters criticized DOE for not dedicating a separate and comprehensive rulemaking to the use of the new methodologies in future agency analyses. Commenter (Hussman Corporation) opposed the metric being added in a NODA with a final rule due in four months and advocated that any SC–GHG considerations ''should be handled by DOE as a discussion item for all appliances and not simply added during a proposed rulemaking for one product category.'' (Hussman Corporation, No. 108 at p. 3)

Commenter (ALA et al.) also urged DOE to evaluate its use of the 2023 SC–GHG methodologies in the anticipated rulemaking dedicated to reviewing and updating DOE's analytical methodology. ALA reiterated that vetting analytical method changes on issues as complex as SC–GHG is better done in a focused rulemaking rather than as part of a product-specific rulemaking on standards. (ALA et al., No. 109 at p. 2) Commenter (NAMA) stated that the new methodologies deserve an open and transparent discussion on how they will be applied before they are utilized in regulatory action. (NAMA, No. 112 at p. 4).

Commenter (GAAS) claimed that DOE's introduction of the SC–GHG within an electric appliance docket was an attempt to implement it without wide recognition or objection from other stakeholders that may be adversely impacted by the new methodologies. GAAS further deemed this decision, along with alleged policies of forced societal electrification, the ''energy equivalent of ethnic cleansing.'' (GAAS, No. 96 at p. 6) Commenter (NAHB) stated that the DOE should increase transparency with regards to the process used to develop the new metric, stating

that the process used to develop these estimates only involved parties invited to participate and that the choices made by these participants heavily affect the results. (NAHB, No. 103 at p. 4)

While DOE proposed in the August 2024 NODA to shift to the updated estimates, in this final rule, DOE is presenting climate benefits using both the 2021 interim SC–GHG estimates and the 2023 SC–GHG estimates without relying on either set of values to justify its standards. By presenting both sets of estimates, DOE is simply providing additional information to the public regarding the estimated benefits of the final rule. Furthermore, DOE uses modeled estimates of values based on data inputs and analytical assumptions in its analyses all the time, from EIA projections of future energy supplies and prices, to estimates of costs of technologies over time. Here, DOE determined that public notice and comment is appropriate given the substantial interest in this topic, differences of opinion around various methodological choices, and the importance of the methodological updates underlying the new estimates. Multiple commenters did in fact comment on the August NODA solely on this topic, indicating that the public received notice of and had opportunity to comment on DOE's proposed preliminary decision to use the updated 2023 SC–GHG estimates.

Commenter (AEI) stated that the 2023 SC–GHG methodologies incorporate the co-benefits of regulating criteria and hazardous air pollutants in its calculations despite those pollutants being regulated independently under the Clean Air Act. Commenter raised concerns that accounting for the benefits of regulating these pollutants when they are already regulated improperly inflates the health benefits of GHG policies. (AEI, No. 97 at p. 8)

Both the 2021 interim SC–GHG estimates and the 2023 SC–GHG estimates account for the avoided harms of GHG emissions. Neither of the SC–GHG estimates incorporate the co-benefits of regulating fine particulates, other criteria air pollutants, or hazardous air pollutants. In its energy conservation rules, DOE separately estimates the resulting air pollution emissions reductions. DOE calculates the benefits from the reductions in sulfur dioxide, nitrogen oxides, nitrous oxide, and mercury, as well as greenhouse gases that result from the final rule. The benefits for each air pollutant are calculated separately, and none of the calculations include co-benefits from reducing the other pollutants.

Commenter (U.S. Chamber of Commerce et al.) stated that the significantly higher 2023 SC–GHG values could lead to overly stringent regulations and increased compliance costs for industries. Commenter further asserted that higher SC–GHG values could have a chilling effect on economic activity and that the change in methodologies could produce uncertainty that challenges businesses and investors. Commenter noted concerns with the 2021 interim SC–GHG estimates also, but ultimately recommended applying those values as opposed to the 2023 SC–GHG estimates. (U.S. Chamber of Commerce et al., No. 115 at pp. 5–6)

As stated previously, the standards in this rule do not rely on the monetized climate benefits and would be economically justified regardless of their use. Further, these standards would be economically justified using either the 2023 SC–GHG estimates or the 2021 interim SC–GHG estimates. As such, compliance costs for industries would be the same regardless of which SC–GHG metric is utilized and even if SC–GHG were not accounted for at all.

V.CDOE's derivations of the SC–CO2, SC–N2O, and SC–CH4 values used for this final rule are discussed in the following sections, and the results of DOE's analyses estimating the benefits of the reductions in emissions of these GHGs are presented in section V.B.6 of this document.

a. Social Cost of Carbon

The SC–CO_2 values used for this final rule are presented using two sets of SC–GHG estimates. One set is the 2023 SC–GHG estimates published by the EPA, which are shown in table IV.21 in 5-year increments from 2020 to 2050. The full set of annual values that DOE used is presented in appendix 14A of the final rule TSD. These estimates include values out to 2080. DOE expects additional climate benefits to accrue for equipment still operating after 2080, but a lack of available SC–CO_2 estimates for emissions years beyond 2080 prevents DOE from monetizing these potential benefits in this analysis.

Table IV.21 Annual SC-CO_2 Values Based on 2023 SC-GHG Estimates, 2020–2050 (2020$ per Metric Ton CO_2)

Emissions Year	Near-term Ramsey Discount Rate		
	2.5%	2.0%	1.5%
2020	117	193	337
2025	130	212	360
2030	144	230	384
2035	158	248	408
2040	173	267	431
2045	189	287	456
2050	205	308	482

DOE also presents results using interim SC-CO_2 values based on the values developed for the February 2021 SC-GHG TSD, which are shown in table IV. in 5-year increments from 2020 to 2050. The set of annual values that DOE used, which was adapted from estimates published by EPA in 2021,[144] is presented in appendix 14A of the final rule TSD. These estimates are based on

[144] *See* EPA, *Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis,* Washington, DC, December 2021. Available at *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1013ORN.pdf* (last accessed Dec. 3, 2024).

methods, assumptions, and parameters identical to the estimates published by the IWG (which were based on EPA modeling), and include values for 2051 to 2070.

Table IV.22. Annual SC-CO_2 Values Based on 2021 Interim SC-GHG Estimates, 2020–2050 (2020$ per Metric Ton CO_2)

Year	Discount Rate and Statistic			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2020	14	51	76	152
2025	17	56	83	169
2030	19	62	89	187
2035	22	67	96	206
2040	25	73	103	225
2045	28	79	110	242
2050	32	85	116	260

DOE multiplied the CO_2 emissions reduction estimated for each year by the SC-CO_2 value for that year in all cases. DOE adjusted the values to 2023$ using the implicit price deflator for gross domestic product (''GDP'') from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in all cases using the specific discount rate that had been used to obtain the SC-CO_2 values in each case.

b. Social Cost of Methane and Nitrous Oxide

The SC-CH_4 and SC-N_2O values used for this final rule are presented using two sets of SC-GHG estimates. One set is the 2023 SC-GHG estimates published by the EPA. Table IV.23 shows the updated sets of SC-CH_4 and SC-N_2O estimates in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the final rule TSD. These estimates include values out to 2080.

Table IV.23 Annual SC-CH_4 and SC-N_2O Values Based on the 2023 SC-GHG estimates, 2020–2080 (2020$ per Metric Ton)

Emissions Year	SC-CH_4			SC-N_2O		
	Near-term Ramsey Discount Rate			Near-term Ramsey Discount Rate		
	2.5%	2.0%	1.5%	2.5%	2.0%	1.5%
2020	1,257	1,648	2,305	35,232	54,139	87,284
2025	1,590	2,025	2,737	39,972	60,267	95,210
2030	1,924	2,403	3,169	44,712	66,395	103,137
2035	2,313	2,842	3,673	49,617	72,644	111,085
2040	2,702	3,280	4,177	54,521	78,894	119,032
2045	3,124	3,756	4,718	60,078	85,945	127,916
2050	3,547	4,231	5,260	65,635	92,996	136,799

DOE also presents results using interim SC-CH_4 and SC-N_2O values based on the values developed for the February 2021 SC-GHG TSD. Table IV.24 shows the updated sets of SC-CH_4 and SC-N_2O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual unrounded values used in the calculations is presented in appendix 14A of the final rule TSD. These estimates include values out to 2070.

Table IV.24 Annual SC-CH_4 and SC-N_2O Values Based on 2021 Interim SC-GHG Estimates, 2020–2050 (2020$ per Metric Ton)

Year	SC-CH_4				SC-N_2O			
	Discount Rate and Statistic				Discount Rate and Statistic			
	5%	3%	2.5%	3%	5%	3%	2.5 %	3%
	Average	Average	Average	95th percentile	Average	Average	Average	95th percentile
2020	670	1500	2000	3900	5800	18000	27000	48000
2025	800	1700	2200	4500	6800	21000	30000	54000
2030	940	2000	2500	5200	7800	23000	33000	60000
2035	1100	2200	2800	6000	9000	25000	36000	67000
2040	1300	2500	3100	6700	10000	28000	39000	74000
2045	1500	2800	3500	7500	12000	30000	42000	81000
2050	1700	3100	3800	8200	13000	33000	45000	88000

DOE multiplied the CH_4 and N_2O emissions reduction estimated for each year by the SC-CH_4 and SC-N_2O estimates for that year in each of the cases. DOE adjusted the values to 2023$ using the implicit price deflator for GDP from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC-CH_4 and SC-N_2O estimates in each case.

2. Monetization of Other Emissions Impacts

For the final rule, DOE estimated the monetized value of NO_X and SO_2 emissions reductions from electricity generation using benefit-per-ton estimates for that sector from EPA's Benefits Mapping and Analysis Program.[145] Table 5 of the EPA TSD provides a summary of the health impact endpoints quantified in the analysis. DOE used EPA's values for $PM_{2.5}$-related benefits associated with NO_X and SO_2 and for ozone-related benefits associated with NO_X for 2025, 2030, 2035, and 2040, calculated with discount rates of 3 percent and 7 percent. DOE used linear interpolation to define values for the years not given in the 2025 to 2040 period; for years beyond 2040, the values are held constant (rather than extrapolated) to be conservative. DOE combined the EPA regional benefit-per-ton estimates with regional information on electricity consumption and emissions from *AEO2023* to define weighted-average national values for NO_X and SO_2 (see appendix 14B of the final rule TSD).

DOE multiplied the site emissions reduction (in tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate.

M. Utility Impact Analysis

The utility impact analysis estimates the changes in installed electrical capacity and generation projected to result for each considered TSL. The analysis is based on published output from the NEMS associated with *AEO2023*. NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. For the current analysis, impacts are quantified by comparing the levels of electricity sector generation, installed capacity, fuel consumption, and emissions in the *AEO2023* Reference case and various side cases. Details of the methodology are provided in the appendices to chapter 15 of the final rule TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of potential new or amended energy conservation standards.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the equipment subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by: (1) reduced spending by consumers on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased consumer spending on the equipment to which the new standards apply and other goods and services, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (''BLS''). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility

[145] U.S. Environmental Protection Agency. Estimating the Benefit per Ton of Reducing Directly Emitted $PM_{2.5}$, $PM_{2.5}$ Precursors and Ozone Precursors from 21 Sectors. Available at *www.epa.gov/benmap/estimating-benefit-ton-reducing-directly-emitted-pm25-pm25-precursors-and-ozone-precursors.* (last accessed August 29, 2024).

sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[146] Bureau of Economic Analysis input-output multipliers also show a lower labor intensity per million dollars of activity for utilities as compared to other industries.[147] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, these data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this final rule using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 (''ImSET'').[148] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (''I–O'') model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may overestimate actual job impacts over the long run for this rule. Therefore, DOE used ImSET only to generate results for near-term timeframes (2029–2033), where these uncertainties are reduced.

For more details on the employment impact analysis, see chapter 16 of the final rule TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for CRE. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for CRE, and the standards levels that DOE is adopting in this final rule. Additional details regarding DOE's analyses are contained in the final rule TSD supporting this document.

A. Trial Standard Levels

In general, DOE typically evaluates potential new or amended standards for equipment by grouping individual efficiency levels for each class into TSLs. Use of TSLs allows DOE to identify and consider manufacturer cost interactions between the equipment classes, to the extent that there are such interactions, and price elasticity of consumer purchasing decisions that may change when different standard levels are set.

In the analysis conducted for this final rule, DOE analyzed the benefits and burdens of five TSLs for CRE. DOE developed TSLs that combine efficiency levels for each analyzed equipment class. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the final rule TSD. Table V.1 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for CRE. TSL 5 represents the maximum technologically feasible (''max-tech'') energy efficiency for all equipment classes. TSL 4 represents an intermediate TSL representing less stringent efficiency levels for approximately one-third of the equipment classes analyzed compared to TSL 5. TSL 3 represents less stringent efficiency levels for 12 equipment classes compared to TSL 4. TSL 2 represents another intermediate TSL, representing less stringent efficiency levels for 11 equipment classes, compared to TSL 3. TSL 1 represents the minimum efficiency level for most analyzed equipment classes. DOE considered all efficiency levels as part of its analysis.[149] Analytical results broken down by EL and equipment class are presented in chapters 8 and 10 of the final rule TSD.

[146] *See* U.S. Bureau of Labor Statistics. Industry Output and Employment. Available at *www.bls.gov/emp/data/industry-out-and-emp.htm* (last accessed Aug. 19, 2024).

[147] *See Regional Input-Output Modeling System (RIMS II) User's Guide.* U.S. Department of Commerce—Bureau of Economic Analysis. Available at *bea.gov/resources/methodologies/RIMSII-user-guide* (last accessed Aug. 19, 2024).

[148] Livingston, O.V., S.R. Bender, M.J. Scott, and R.W. Schultz. *ImSET 4.0: Impact of Sector Energy Technologies Model Description and User's Guide.* 2015. Pacific Northwest National Laboratory: Richland, WA. PNNL–24563.

[149] Efficiency levels that were analyzed for this final rule are discussed in section IV.C.1 of this document. Results by efficiency level are presented in chapters 8 and 10 of the final rule TSD.

Table V.1 Trial Standard Levels for CRE

Equipment Class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
CB.SC.L	1	2	3	3	3
CB.SC.M	1	2	3	3	3
HCS.SC.L	1	1	1	1	1
HCS.SC.M	1	2	2	2	2
HCT.SC.I	1	2	2	2	6
HCT.SC.L	0	0	0	0	6
HCT.SC.M	0	0	0	0	5
HZO.RC.L	0	0	0	0	0
HZO.RC.M	0	0	0	0	0
HZO.SC.L	1	1	2	2	2
HZO.SC.M	1	1	2	2	2
SOC.RC.M	0	0	0	3	4
SOC.SC.M	1	3	5	7	7
SVO.RC.M	1	1	1	2	2
SVO.SC.M	1	3	4	5	5
VCS.SC.H	2	2	2	2	3
VCS.SC.I	1	2	3	3	3
VCS.SC.L	1	2	3	3	3
VCS.SC.M	1	1	1	2	2
VCT.RC.L	0	0	0	2	3
VCT.RC.M	0	0	0	3	4
VCT.SC.H	1	2	2	2	7
VCT.SC.I	0	0	0	0	3
VCT.SC.L	1	1	2	5	5
VCT.SC.M	1	1	2	4	6
VOP.RC.L	1	1	1	2	2
VOP.RC.M	1	1	1	2	2
VOP.SC.M	1	3	4	5	5

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on CRE consumers by looking at the effects that potential new and amended standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on selected consumer subgroups. These analyses are discussed in the following sections.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency equipment affect consumers in two ways: (1) purchase price increases, and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* equipment price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses equipment lifetime and a discount rate. Chapter 8 of the final rule TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through table V.57 show the LCC and PBP results for the TSLs considered for each equipment class. In the first of each pair of tables, the simple payback is measured relative to the baseline equipment. In the second table, the impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.9 of this document). Because some consumers purchase equipment with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline equipment and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase equipment with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

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Table V.2 Average LCC and PBP Results for CB.SC.L

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	2,981.6	273.0	2,636.7	5,540.9	0.0	13.4
1	1	2,987.9	267.6	2,586.6	5,497.0	1.2	13.4
2	2	3,003.0	260.8	2,526.2	5,451.3	1.8	13.4
3-5	3	3,142.7	232.2	2,282.9	5,344.1	4.0	13.4

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.3 Average LCC Savings Relative to the No-New-Standards Case for CB.SC.L

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1	1	44.3	0%
2	2	75.4	0.3%
3-5	3	163.6	8.8%

* The savings represent the average LCC for affected consumers.

Table V.4 Average LCC and PBP Results for CB.SC.M

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	2,335.2	106.0	1,042.1	3,317.1	0.0	13.3
1	1	2,341.6	102.6	1,011.6	3,292.7	1.9	13.3
2	2	2,356.7	98.4	975.5	3,271.4	2.8	13.3
3-5	3	2,496.4	82.4	854.6	3,286.6	6.8	13.3

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.5 Average LCC Savings Relative to the No-New-Standards Case for CB.SC.M

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1	1	24.6	0.1%
2	2	46.4	1.0%
3-5	3	8.1	26.2%

* The savings represent the average LCC for affected consumers.

Table V.6 Average LCC and PBP Results for HCS.SC.L

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	1,674.1	64.4	627.5	2,256.4	0.0	13.4
1-5	1	1,687.8	60.1	590.3	2,232.5	3.2	13.4

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.7 Average LCC Savings Relative to the No-New-Standards Case for HCS.SC.L

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1-5	1	24.1	3.5%

* The savings represent the average LCC for affected consumers.

Table V.8 Average LCC and PBP Results for HCS.SC.M

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	1,667.0	45.8	464.8	2,086.1	0.0	13.3
1	1	1,677.3	43.2	442.5	2,073.9	3.9	13.3
2-5	2	1,691.0	39.9	415.0	2,059.6	4.0	13.3

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.9 Average LCC Savings Relative to the No-New-Standards Case for HCS.SC.M

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1	1	12.4	3.0%
2-5	2	18.9	9.1%

* The savings represent the average LCC for affected consumers.

Table V.10 Average LCC and PBP Results for HCT.SC.I

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	1,536.5	129.5	1,308.4	2,807.6	0.0	13.5
1	1	1,609.7	119.2	1,209.9	2,780.5	7.1	13.5
2-4	2	1,622.0	117.3	1,192.1	2,774.7	7.0	13.5
--	3	1,761.5	104.3	1,097.5	2,816.2	8.9	13.5
--	4	1,850.0	103.2	1,074.2	2,879.3	11.9	13.5
--	5	1,870.1	102.7	1,069.1	2,893.8	12.5	13.5
5	6	2,110.6	101.4	1,057.2	3,116.5	20.5	13.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.11 Average LCC Savings Relative to the No-New-Standards Case for HCT.SC.I

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1	1	26.7	9.6%
2-4	2	29.3	10.4%
--	3	(24.9)	34.6%
--	4	(87.6)	41.2%
--	5	(99.9)	43.4%
5	6	(309.8)	58.8%

* The savings represent the average LCC for affected consumers.

Table V.12 Average LCC and PBP Results for HCT.SC.L

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1-4	0	1,443.6	80.6	823.4	2,230.4	0.0	13.4
--	1	1,516.8	74.4	764.9	2,243.1	11.9	13.4
--	2	1,529.1	73.4	755.0	2,245.2	11.9	13.4
--	3	1,617.7	72.3	731.7	2,308.3	21.1	13.4
--	4	1,637.8	72.0	728.4	2,324.6	22.5	13.4
--	5	1,777.2	70.4	744.8	2,476.9	32.9	13.4
5	6	2,017.6	69.6	737.3	2,703.7	52.6	13.4

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.13 Average LCC Savings Relative to the No-New-Standards Case for HCT.SC.L

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
--	1	(12.4)	18.3%
--	2	(13.0)	20.9%
--	3	(70.6)	48.5%
--	4	(86.1)	49.7%
--	5	(235.8)	52.3%
5	6	(430.4)	60.5%

* The savings represent the average LCC for affected consumers.

Table V.14 Average LCC and PBP Results for HCT.SC.M

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1-4	0	1,372.5	37.5	407.5	1,741.6	0.0	13.3
--	1	1,445.6	35.6	389.6	1,794.8	38.6	13.3
--	2	1,457.9	35.2	385.9	1,803.1	37.4	13.3
--	3	1,546.4	34.2	362.8	1,866.0	52.0	13.3
--	4	1,566.5	34.0	361.5	1,884.3	55.8	13.3
5	5	1,806.9	33.7	358.7	2,115.1	114.9	13.3

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.15 Average LCC Savings Relative to the No-New-Standards Case for HCT.SC.M

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
--	1	(53.4)	42.9%
--	2	(55.8)	48.3%
--	3	(95.4)	83.1%
--	4	(112.5)	84.3%
5	5	(340.7)	86.4%

* The savings represent the average LCC for affected consumers.

Table V.16 Average LCC and PBP Results for HZO.RC.L

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1-5	0	5,912.4	1,383.8	12,889.5	18,801.9	0.0	13.0

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.17 Average LCC Savings Relative to the No-New-Standards Case for HZO.RC.L

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1-5	0	0.00	0.0%

* The savings represent the average LCC for affected consumers.

Table V.18 Average LCC and PBP Results for HZO.RC.M

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1-5	0	5,914.4	616.9	5,803.3	11,717.7	0.0	13.0

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.19 Average LCC Savings Relative to the No-New-Standards Case for HZO.RC.M

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1-5	0	0.00	0.0%

* The savings represent the average LCC for affected consumers.

Table V.20 Average LCC and PBP Results for HZO.SC.L

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	3,110.6	1,244.7	11,366.8	14,409.0	0.0	12.6
1-2	1	3,124.2	1,236.9	11,299.7	14,355.2	1.8	12.6
3-5	2	3,600.1	1,039.1	9,594.3	13,115.3	2.4	12.6

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.21 Average LCC Savings Relative to the No-New-Standards Case for HZO.SC.L

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1-2	1	54.0	0.03%
3-5	2	1,243.6	0.3%

* The savings represent the average LCC for affected consumers.

Table V.22 Average LCC and PBP Results for HZO.SC.M

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	2,336.9	517.3	4,721.0	7,006.0	0.0	12.5
1-2	1	2,350.5	511.2	4,670.0	6,968.3	2.3	12.5
3-5	2	2,489.8	458.4	4,224.4	6,658.8	2.6	12.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.23 Average LCC Savings Relative to the No-New-Standards Case for HZO.SC.M

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1-2	1	39.2	0.1%
3-5	2	312.9	1.0%

* The savings represent the average LCC for affected consumers.

Table V.24 Average LCC and PBP Results for SOC.RC.M

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1-3	0	13,558.3	965.0	10,107.1	23,665.3	0.0	13.0
--	1	13,605.7	964.0	10,097.6	23,703.3	46.7	13.0
--	2	13,800.2	898.3	9,079.0	22,879.3	3.6	13.0
4	3	13,877.8	897.8	9,074.5	22,952.3	4.8	13.0
5	4	14,805.4	896.6	9,063.7	23,869.1	18.3	13.0

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.25 Average LCC Savings Relative to the No-New-Standards Case for SOC.RC.M

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
--	1	(37.9)	11.8%
--	2	816.4	16.1%
4	3	743.4	16.1%
5	4	(181.4)	36.7%

* The savings represent the average LCC for affected consumers.

Table V.26 Average LCC and PBP Results for SOC.SC.M

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	7,798.4	436.0	4,382.6	12,014.9	0.0	12.5
1	1	7,822.4	382.8	3,914.1	11,569.8	0.5	12.5
--	2	7,839.4	377.8	3,873.5	11,545.8	0.7	12.5
2	3	7,846.4	371.6	3,818.9	11,498.2	0.7	12.5
--	4	7,985.6	351.0	3,662.7	11,478.2	2.2	12.5
3	5	8,001.5	350.4	3,657.1	11,488.1	2.4	12.5
--	6	8,196.0	332.4	3,348.5	11,369.9	3.8	12.5
4-5	7	8,531.0	331.7	3,342.4	11,691.6	7.0	12.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.27 Average LCC Savings Relative to the No-New-Standards Case for SOC.SC.M

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1	1	441.5	0.0%
--	2	448.3	0.2%
2	3	481.5	0.0%
--	4	453.4	3.1%
3	5	443.5	3.7%
--	6	504.8	5.0%
4-5	7	183.2	22.8%

* The savings represent the average LCC for affected consumers.

Table V.28 Average LCC and PBP Results for SVO.RC.M

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	6,955.4	1,267.3	12,496.0	19,451.3	0.0	13.1
1-3	1	7,145.5	1,187.6	12,211.7	19,357.3	2.4	13.1
4-5	2	7,366.6	1,149.6	11,596.2	18,962.8	3.5	13.1

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.29 Average LCC Savings Relative to the No-New-Standards Case for SVO.RC.M

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1-3	1	97.1	25.6%
4-5	2	473.0	14.6%

* The savings represent the average LCC for affected consumers.

Table V.30 Average LCC and PBP Results for SVO.SC.M

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	4,229.1	1,020.4	9,486.6	13,624.4	0.0	12.5
1	1	4,292.4	946.4	8,994.5	13,194.3	0.9	12.5
--	2	4,305.1	933.1	8,878.1	13,090.3	0.9	12.5
2	3	4,335.3	916.6	8,737.1	12,978.8	1.0	12.5
3	4	4,981.2	835.2	8,032.2	12,905.9	4.1	12.5
4-5	5	5,096.1	823.5	7,844.0	12,830.1	4.4	12.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.31 Average LCC Savings Relative to the No-New-Standards Case for SVO.SC.M

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1	1	430.2	0.0%
--	2	493.8	0.0%
2	3	576.1	0.03%
3	4	578.9	11.8%
4-5	5	642.4	10.1%

* The savings represent the average LCC for affected consumers.

Table V.32 Average LCC and PBP Results for VCS.SC.H

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	4,216.4	82.5	853.1	4,963.1	0.0	13.5
--	1	4,222.8	80.0	831.9	4,948.1	2.6	13.5
1-4	2	4,237.9	77.1	807.5	4,938.5	4.0	13.5
5	3	4,377.6	66.0	732.2	4,999.3	9.8	13.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.33 Average LCC Savings Relative to the No-New-Standards Case for VCS.SC.H

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
--	1	0.0	0.0%
1-4	2	9.8	5.6%
5	3	(57.7)	58.9%

* The savings represent the average LCC for affected consumers.

Table V.34 Average LCC and PBP Results for VCS.SC.I

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	4,875.2	679.7	6,528.2	11,270.1	0.0	13.4
1	1	4,881.6	674.3	6,478.4	11,226.5	1.2	13.4
2	2	4,896.7	667.6	6,418.4	11,181.2	1.8	13.4
3-5	3	5,176.0	583.0	5,676.1	10,710.6	3.1	13.4

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.35 Average LCC Savings Relative to the No-New-Standards Case for VCS.SC.I

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1	1	45.1	0.0%
2	2	70.8	0.1%
3-5	3	488.2	3.9%

* The savings represent the average LCC for affected consumers.

Table V.36 Average LCC and PBP Results for VCS.SC.L

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	4,441.3	475.8	4,560.5	8,879.8	0.0	13.3
1	1	4,447.6	470.4	4,510.8	8,836.2	1.2	13.3
2	2	4,462.7	463.6	4,450.8	8,791.0	1.8	13.3
3-5	3	4,602.4	401.5	3,892.7	8,368.7	2.2	13.3

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.37 Average LCC Savings Relative to the No-New-Standards Case for VCS.SC.L

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1	1	43.3	0.0%
2	2	88.0	0.1%
3-5	3	470.5	0.4%

* The savings represent the average LCC for affected consumers.

Table V.38 Average LCC and PBP Results for VCS.SC.M

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	4,222.3	127.8	1,285.2	5,395.9	0.0	13.5
1-3	1	4,237.4	122.8	1,241.6	5,367.1	3.0	13.5
4-5	2	4,377.0	111.7	1,166.3	5,427.7	9.6	13.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.39 Average LCC Savings Relative to the No-New-Standards Case for VCS.SC.M

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1-3	1	29.1	3.1%
4-5	2	(42.0)	51.8%

* The savings represent the average LCC for affected consumers.

Table V.40 Average LCC and PBP Results for VCT.RC.L

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1-3	0	9,220.4	1,438.3	14,513.2	23,733.5	0.0	14.0
--	1	9,441.7	1,414.5	14,122.1	23,563.9	9.3	14.0
4	2	9,715.5	1,408.7	14,064.8	23,780.3	16.8	14.0
5	3	12,989.5	1,372.5	13,708.1	26,697.6	57.3	14.0

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.41 Average LCC Savings Relative to the No-New-Standards Case for VCT.RC.L

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
--	1	174.2	3.5%
4	2	(182.9)	69.8%
5	3	(3,080.4)	85.6%

* The savings represent the average LCC for affected consumers.

Table V.42 Average LCC and PBP Results for VCT.RC.M

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1-3	0	9,014.1	488.0	5,268.2	14,282.3	0.0	14.0
--	1	9,181.5	482.0	5,209.0	14,390.5	27.8	14.0
--	2	9,402.9	455.9	4,795.9	14,198.7	12.1	14.0
4	3	9,676.6	454.6	4,782.5	14,459.1	19.8	14.0
5	4	12,949.6	451.3	4,751.0	17,700.6	107.3	14.0

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.43 Average LCC Savings Relative to the No-New-Standards Case for VCT.RC.M

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
--	1	(108.5)	8.7%
--	2	170.3	10.6%
4	3	(108.3)	31.6%
5	4	(3,333.3)	55.9%

* The savings represent the average LCC for affected consumers.

Table V.44 Average LCC and PBP Results for VCT.SC.H

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	4,570.0	122.2	1,310.6	5,763.6	0.0	13.4
1	1	4,576.3	119.8	1,289.6	5,748.7	2.7	13.4
2-4	2	4,591.4	116.9	1,265.3	5,739.2	4.0	13.4
--	3	4,730.9	102.6	1,158.7	5,768.5	8.2	13.4
--	4	4,797.8	101.1	1,145.2	5,820.2	10.8	13.4
--	5	4,913.0	98.3	1,088.9	5,876.1	14.3	13.4
--	6	5,022.5	97.8	1,084.5	5,978.4	18.6	13.4
5	7	6,332.0	96.8	1,074.2	7,244.1	69.2	13.4

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.45 Average LCC Savings Relative to the No-New-Standards Case for VCT.SC.H

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1	1	14.6	1.0%
2-4	2	19.3	7.0%
--	3	(16.1)	35.8%
--	4	(67.8)	41.4%
--	5	(113.4)	54.2%
--	6	(201.5)	69.3%
5	7	(1,467.3)	72.7%

* The savings represent the average LCC for affected consumers.

Table V.46 Average LCC and PBP Results for VCT.SC.I

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1-2	0	6,919.6	808.7	7,881.5	14,631.6	0.0	13.4
3	1	7,034.7	806.5	7,825.6	14,688.0	51.7	13.4
--	2	7,144.2	801.3	7,777.1	14,746.3	30.5	13.4
4	3	8,453.6	769.4	7,475.0	15,721.5	39.0	13.4

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.47 Average LCC Savings Relative to the No-New-Standards Case for VCT.SC.I

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
3	1	(57.0)	2.0%
--	2	(68.7)	11.2%
4	3	(990.6)	48.0%

* The savings represent the average LCC for affected consumers.

Table V.48 Average LCC and PBP Results for VCT.SC.L

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	6,788.8	673.4	6,539.3	13,137.6	0.0	13.4
1-2	1	6,803.9	666.7	6,479.3	13,092.3	2.2	13.4
3	2	7,082.9	588.1	5,793.8	12,677.9	3.5	13.4
--	3	7,198.1	585.3	5,737.9	12,733.9	4.6	13.4
--	4	7,307.6	582.5	5,711.7	12,814.2	5.7	13.4
4-5	5	8,617.3	565.4	5,548.8	13,924.3	16.9	13.4

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.49 Average LCC Savings Relative to the No-New-Standards Case for VCT.SC.L

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1-2	1	45.2	0.4%
3	2	436.9	7.2%
--	3	380.6	11.0%
--	4	300.3	20.5%
4-5	5	(809.8)	82.7%

* The savings represent the average LCC for affected consumers.

Table V.50 Average LCC and PBP Results for VCT.SC.M

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	4,580.6	203.7	2,069.4	6,540.2	0.0	13.3
1-2	1	4,595.7	198.7	2,026.6	6,512.2	3.1	13.3
3	2	4,735.2	179.9	1,879.5	6,501.1	6.5	13.3
--	3	4,802.1	177.5	1,856.9	6,543.9	8.5	13.3
4	4	4,917.2	174.7	1,801.0	6,600.4	11.6	13.3
--	5	5,026.7	173.9	1,793.7	6,700.0	15.0	13.3
5	6	6,336.2	172.1	1,776.6	7,960.8	55.6	13.3

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.51 Average LCC Savings Relative to the No-New-Standards Case for VCT.SC.M

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1-2	1	28.0	2.7%
3	2	33.2	25.3%
--	3	(9.9)	38.2%
4	4	(66.0)	44.6%
--	5	(165.4)	51.5%
5	6	(1,421.6)	61.3%

* The savings represent the average LCC for affected consumers.

Table V.52 Average LCC and PBP Results for VOP.RC.L

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	9,692.4	4,493.8	42,696.1	52,388.5	0.0	13.0
1-3	1	9,882.5	4,283.3	41,193.3	51,075.8	0.9	13.0
4-5	2	10,103.6	4,235.7	40,431.7	50,535.3	1.6	13.0

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.53 Average LCC Savings Relative to the No-New-Standards Case for VOP.RC.L

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1-3	1	1,300.4	0.00%
4-5	2	1,529.7	3.1%

* The savings represent the average LCC for affected consumers.

Table V.54 Average LCC and PBP Results for VOP.RC.M

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	8,838.5	1,632.2	16,060.5	24,898.9	0.0	13.0
1-3	1	9,028.7	1,525.8	15,526.0	24,554.7	1.8	13.0
4-5	2	9,249.8	1,478.2	14,764.8	24,014.6	2.7	13.0

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.55 Average LCC Savings Relative to the No-New-Standards Case for VOP.RC.M

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1-3	1	337.4	4.1%
4-5	2	798.0	7.5%

* The savings represent the average LCC for affected consumers.

Table V.56 Average LCC and PBP Results for VOP.SC.M

TSL	Efficiency Level	Average Costs *2023$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
--	0	6,623.6	1,264.5	11,857.3	18,337.8	0.0	12.6
1	1	6,687.0	1,171.3	11,189.4	17,731.8	0.7	12.6
--	2	6,705.9	1,151.5	11,014.4	17,575.4	0.7	12.6
2	3	6,751.2	1,126.8	10,802.6	17,407.8	0.9	12.6
3	4	7,029.7	981.9	9,545.7	16,423.4	1.4	12.6
4-5	5	7,171.2	967.5	9,306.7	16,322.9	1.8	12.6

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline product.

Table V.57 Average LCC Savings Relative to the No-New-Standards Case for VOP.SC.M

TSL	Efficiency Level	Life-Cycle Cost Savings	
		Average LCC Savings* *2023$*	Percent of Consumers that Experience Net Cost
1	1	604.6	0.0%
--	2	760.5	0.0%
2	3	915.5	0.0%
3	4	1,867.5	0.0%
4-5	5	1,945.9	0.3%

* The savings represent the average LCC for affected consumers.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on small businesses. Table V.58 compares the average LCC savings and PBP at each efficiency level for small businesses with the entire consumer sample for CRE. In most cases, the average LCC savings and PBP for small businesses at the considered efficiency levels are not substantially different from the average for all businesses. Chapter 11 of the final rule TSD presents the complete LCC and PBP results for the subgroup.

Table V.58 Average LCC and PBP Results Comparison for Small Businesses for CRE

Equipment Class		EL	Average LCC Savings		Simple Payback Period		Net Cost	
			2023$		*years*		*%*	
			Small Business	Ref. Case	Small Business	Ref. Case	Small Business	Ref. Case
CB.SC.L	1	1	46.7	44.3	1.0	1.2	0%	0%
	2	2	80.3	75.4	1.4	1.8	0%	0%
	3-5	3	182.7	163.6	3.2	4.0	3%	9%
CB.SC.M	1	1	26.4	24.6	1.5	1.9	0%	0%
	2	2	50.7	46.4	2.3	2.8	0%	1%
	3-5	3	21.9	8.1	5.5	6.8	17%	26%
HCS.SC.L	1-5	1	26.3	24.1	2.6	3.2	0%	4%
HCS.SC.M	1	1	14.1	12.4	3.2	3.9	1%	3%
	2-5	2	21.7	18.9	3.3	4.0	4%	9%
HCT.SC.I	1	1	31.1	26.7	5.8	7.1	2%	10%
	2-4	2	34.0	29.3	5.7	7.0	2%	10%
	--	3	(12.6)	(24.9)	7.3	8.9	31%	35%
	--	4	(77.2)	(87.6)	9.7	11.9	44%	41%
	--	5	(89.6)	(99.9)	10.2	12.5	46%	43%
	5	6	(301.0)	(309.8)	16.7	20.5	59%	59%
HCT.SC.L	--	1	(9.8)	(12.4)	9.6	11.9	20%	18%
	--	2	(10.3)	(13.0)	9.6	11.9	22%	21%
	--	3	(70.8)	(70.6)	17.1	21.1	50%	49%
	--	4	(86.2)	(86.1)	18.3	22.5	51%	50%
	--	5	(231.0)	(235.8)	26.7	32.9	52%	52%
	5	6	(426.6)	(430.4)	42.7	52.6	61%	61%
HCT.SC.M	--	1	(52.7)	(53.4)	31.4	38.6	43%	43%
	--	2	(55.0)	(55.8)	30.4	37.4	48%	48%
	--	3	(96.7)	(95.4)	42.3	52.0	83%	83%
	--	4	(113.8)	(112.5)	45.5	55.8	84%	84%
	5	5	(342.6)	(340.7)	93.6	114.9	86%	86%
HZO.SC.L	1-2	1	59.4	54.0	1.4	1.8	0%	0%
	3-5	2	1,384.4	1,243.6	1.9	2.4	0%	0%
HZO.SC.M	1-2	1	43.2	39.2	1.8	2.3	0%	0%
	3-5	2	353.3	312.9	2.1	2.6	0%	1%
SOC.RC.M	--	1	(37.3)	(37.9)	37.8	46.7	12%	12%
	--	2	798.4	816.4	2.9	3.6	16%	16%
	4	3	725.7	743.4	3.8	4.8	16%	16%
	5	4	(198.1)	(181.4)	14.8	18.3	31%	37%
SOC.SC.M	1	1	477.3	441.5	0.4	0.5	0%	0%
	--	2	486.6	448.3	0.6	0.7	0%	0%
	2	3	522.8	481.5	0.6	0.7	0%	0%
	--	4	507.8	453.4	1.8	2.2	1%	3%
	3	5	498.3	443.5	1.9	2.4	2%	4%

	--	6	542.9	504.8	3.1	3.8	4%	5%
	4-5	7	220.9	183.2	5.7	7.0	18%	23%
SVO.RC.M	1-3	1	218.7	97.1	1.9	2.4	3%	26%
	4-5	2	557.2	473.0	2.8	3.5	12%	15%
SVO.SC.M	1	1	507.5	430.2	0.7	0.9	0%	0%
	--	2	573.0	493.8	0.7	0.9	0%	0%
	2	3	662.7	576.1	0.8	1.0	0%	0%
	3	4	710.4	578.9	3.3	4.1	4%	12%
	4-5	5	766.1	642.4	3.6	4.4	3%	10%
VCS.SC.H	--	1	0.0	0.0	2.2	2.6	0%	0%
	1-4	2	11.5	9.8	3.2	4.0	4%	6%
	5	3	(48.4)	(57.7)	8.0	9.8	62%	59%
VCS.SC.I	1	1	47.7	45.1	1.0	1.2	0%	0%
	2	2	75.6	70.8	1.4	1.8	0%	0%
	3-5	3	533.8	488.2	2.5	3.1	0%	4%
VCS.SC.L	1	1	46.1	43.3	1.0	1.2	0%	0%
	2	2	94.6	88.0	1.4	1.8	0%	0%
	3-5	3	506.3	470.5	1.8	2.2	0%	0%
VCS.SC.M	1-3	1	31.4	29.1	2.5	3.0	0%	3%
	4-5	2	(32.2)	(42.0)	7.9	9.6	51%	52%
VCT.RC.L	--	1	157.3	174.2	7.6	9.3	4%	4%
	4	2	(183.9)	(182.9)	13.6	16.8	69%	70%
	5	3	(3,067.5)	(3,080.4)	46.6	57.3	86%	86%
VCT.RC.M	--	1	(106.0)	(108.5)	22.6	27.8	9%	9%
	--	2	157.8	170.3	9.8	12.1	11%	11%
	4	3	(118.9)	(108.3)	16.1	19.8	29%	32%
	5	4	(3,340.9)	(3,333.3)	87.2	107.3	56%	56%
VCT.SC.H	1	1	16.0	14.6	2.2	2.7	0%	1%
	2-4	2	22.0	19.3	3.3	4.0	3%	7%
	--	3	(3.7)	(16.1)	6.7	8.2	29%	36%
	--	4	(55.0)	(67.8)	8.8	10.8	43%	41%
	--	5	(106.1)	(113.4)	11.7	14.3	58%	54%
	--	6	(195.3)	(201.5)	15.1	18.6	72%	69%
	5	7	(1,464.5)	(1,467.3)	56.3	69.2	73%	73%
VCT.SC.I	--	1	(61.6)	(57.0)	42.2	51.7	2%	2%
	--	2	(67.5)	(68.7)	24.9	30.5	11%	11%
	5	3	(979.4)	(990.6)	31.8	39.0	48%	48%
VCT.SC.L	1-2	1	48.9	45.2	1.8	2.2	0%	0%
	3	2	480.3	436.9	2.8	3.5	1%	7%
	--	3	420.4	380.6	3.8	4.6	3%	11%
	--	4	340.9	300.3	4.6	5.7	7%	21%
	4-5	5	(766.2)	(809.8)	13.8	16.9	88%	83%
VCT.SC.M	1-2	1	31.0	28.0	2.5	3.1	0%	3%
	3	2	48.0	33.2	5.3	6.5	14%	25%
	--	3	5.5	(9.9)	6.9	8.5	30%	38%
	4	4	(54.4)	(66.0)	9.4	11.6	45%	45%
	--	5	(153.7)	(165.4)	12.2	15.0	56%	51%
	5	6	(1,413.1)	(1,421.6)	45.1	55.6	61%	61%
VOP.RC.L	1-3	1	1,515.0	1,300.4	0.7	0.9	0%	0%
	4-5	2	1,677.7	1,529.7	1.3	1.6	3%	3%

VOP.RC.M	1-3	1	480.8	337.4	1.4	1.8	0%	4%
	4-5	2	890.5	798.0	2.2	2.7	3%	7%
VOP.SC.M	1	1	691.4	604.6	0.6	0.7	0%	0%
	--	2	860.6	760.5	0.6	0.7	0%	0%
	2	3	1,031.3	915.5	0.8	0.9	0%	0%
	3	4	2,077.3	1,867.5	1.2	1.4	0%	0%
	4-5	5	2,146.3	1,945.9	1.5	1.8	0%	0%

Notes: The results for each EL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product. The savings represent the average LCC savings for affected consumers.

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c. Rebuttable Presumption Payback

As discussed in section IV.F.10 of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for CRE that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedures for CRE. In contrast, the PBPs presented in section V.B.1.a of this document were calculated using distributions that reflect the range of energy use in the field.

Table V.59 presents the rebuttable-presumption payback periods for the considered TSLs for CRE. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for this rule are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6316(e)(1) and 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

Table V.59 Rebuttable-Presumption Payback Periods

Rebuttable Payback Period *years*							
Equipment Class	**EL 1**	**EL 2**	**EL 3**	**EL 4**	**EL 5**	**EL 6**	**EL 7**
CB.SC.L	1.1	1.6	3.6				
CB.SC.M	1.6	2.5	6.2				
HCS.SC.L	2.9						
HCS.SC.M	3.7	3.8					
HCT.SC.I	6.4	6.4	8.0	10.7	11.3	18.4	
HCT.SC.L	10.3	10.3	18.4	19.7	29.1	46.9	
HCT.SC.M	37.0	36.0	48.9	49.1	100.0		
HZO.SC.L	1.6	2.2					
HZO.SC.M	2.0	2.4					
SOC.RC.M	40.0	3.3	4.4	16.8			
SOC.SC.M	0.4	0.6	0.7	2.0	2.2	3.5	6.5
SVO.RC.M	2.2	3.2					
SVO.SC.M	0.8	0.8	0.9	3.7	4.1		
VCS.SC.H	2.3	3.6	8.9				
VCS.SC.I	1.0	1.6	2.8				
VCS.SC.L	1.1	1.6	2.0				
VCS.SC.M	2.7	8.7					
VCT.RC.L	8.5	15.1	51.9				
VCT.RC.M	24.9	10.9	17.8	96.7			
VCT.SC.H	2.3	3.6	7.4	9.8	13.0	16.6	61.9
VCT.SC.I	48.6	27.1	35.3				
VCT.SC.L	2.0	3.1	4.2	5.1	15.2		
VCT.SC.M	2.7	5.8	7.6	10.4	13.4	49.9	
VOP.RC.L	0.8	1.5					
VOP.RC.M	1.6	2.5					
VOP.SC.M	0.6	0.7	0.9	1.3	1.7		

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of new and amended energy conservation standards on manufacturers of CRE. The next section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the final rule TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from a standard. Table V.60 summarizes the estimated financial impacts (represented by changes in INPV) of potential new and amended energy conservation standards on manufacturers of CRE, as well as the conversion costs that DOE estimates manufacturers of CRE would incur at each TSL.

The impact of potential new and amended energy conservation standards was analyzed under two scenarios: (1) the preservation-of-gross-margin percentage scenario; and (2) the preservation-of-operating-profit scenario, as discussed in section IV.J.2.d of this document. The preservation-of-gross-margin percentage scenario applies a ''gross-margin percentage'' of 28 percent for all equipment classes across all efficiency levels.[150] This scenario assumes that a manufacturer's per-unit dollar profit would increase as MPCs increase in the standards cases and represents the upper-bound to industry profitability under potential new and amended energy conservation standards.

The preservation-of-operating-profit scenario reflects manufacturers' concerns about their inability to maintain margins as MPCs increase to reach more stringent efficiency levels. In this scenario, while manufacturers make the necessary investments required to convert their facilities to produce compliant equipment, operating profit does not change in absolute dollars and decreases as a percentage of revenue. The preservation-of-operating-profit scenario represents the lower (or more severe) bound to industry profitability under potential new or amended energy conservation standards.

Each of the modeled scenarios resulted in a unique set of cash flows and corresponding INPV for each TSL. INPV is the sum of the discounted cash flows to the industry from the base year

[150] The gross-margin percentage of 28 percent is based on a manufacturer markup of 1.38.

through the end of the analysis period (2024–2058). The ''change in INPV'' results refer to the difference in industry value between the no-new-standards case and standards case at each TSL. To provide perspective on the short-run cash flow impact, DOE includes a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before new and amended standards would take effect. This figure provides an understanding of the magnitude of the required conversion costs relative to the cash flow generated by the industry in the no-new-standards case.

Conversion costs are one-time investments for manufacturers to bring their manufacturing facilities and equipment designs into compliance with potential new and amended standards. As described in section IV.J.2.c of this document, conversion cost investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new and amended standards. The conversion costs can have a significant impact on the short-term cash flow in the industry and generally result in lower free cash flow in the period between publication of the final rule and the compliance date of potential new and amended standards. Conversion costs are independent of the manufacturer markup scenarios and are not presented as a range in this analysis.

Table V.60 Manufacturer Impact Analysis Results

	Unit	No-New-Standards Case	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
INPV	*2023$ Million*	3,022.3	2,997.6 to 3,001.5	2,994.8 to 2,999.2	2,943.6 to 2,971.0	2,862.2 to 2,958.8	2,800.6 to 3,077.5
Change in INPV*	*2023$ Million*	-	(24.7) to (20.8)	(27.5) to (23.1)	(78.7) to (51.3)	(160.1) to (63.5)	(221.7) to 55.2
	%	-	(0.8) to (0.7)	(0.9) to (0.8)	(2.6) to (1.7)	(5.3) to (2.1)	(7.3) to 1.8
Free Cash flow (2028)	*2023$ Million*	262.6	248.6	246.9	221.0	184.4	173.9
Change in Free Cash flow (2028)*	*%*	-	(5.4)	(6.0)	(15.9)	(29.8)	(33.8)
Product Conversion Costs	*2023$ Million*	-	42.0	46.4	98.5	196.4	223.5
Capital Conversion Costs	*2023$ Million*	-	0.0	0.3	19.1	27.5	30.6
Total Conversion Costs	*2023$ Million*	-	42.0	46.7	117.7	233.9	254.1

*Parentheses denote negative (-) values.

The following cash flow discussion refers to the TSLs as detailed in section V.A of this document. Table V. table V.61 through table V.64 show the design options analyzed in the engineering analysis for each directly analyzed equipment class by TSL. See section IV.C of this document and chapter 5 of the final rule TSD for additional information on the engineering analysis.

Table V.61 Incremental Design Options Analyzed as Compared to Baseline by Trial Standard Level for Vertical Equipment Families

Equipment Class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
VOP.RC.M	Night curtains			Occupancy Sensors with Dimming	
VOP.RC.L	Night curtains			Occupancy Sensors with Dimming	
VOP.SC.M	Night Curtains	Brushless Direct Current ("BLDC") Condenser Fan Motor	VSC	Occupancy Sensors with Dimming	
VCT.RC.M	Baseline			Occupancy Sensors with Dimming; Triple Pane Krypton-Fill Door	Vacuum Insulated Glass Door ("VIG")
VCT.RC.L	Baseline			Occupancy Sensors with Dimming; Triple Pane Krypton-Fill Door	VIG
VCT.SC.H	Permanent Split Capacitator ("PSC") Condenser Fan Motor	BLDC Condenser Fan Motor			VSC; Occupancy Sensors with Dimming; VIG
VCT.SC.M	BLDC Condenser Fan Motor		VSC	Triple Pane Argon-Fill Door; Occupancy Sensors with Dimming	VIG
VCT.SC.L	BLDC Condenser Fan Motor		VSC	Occupancy Sensors with Dimming; VIG	
VCT.SC.I	Baseline				Occupancy Sensors with Dimming; VIG
VCS.SC.H	BLDC Condenser Fan Motor				VSC
VCS.SC.M	BLDC Condenser Fan Motor			VSC	
VCS.SC.L	PSC Condenser Fan Motor	BLDC Condenser Fan Motor	VSC		

Equipment Class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
VCS.SC.I	PSC Condenser Fan Motor	BLDC Condenser Fan Motor	VSC		

Note: Design options are cumulative (*i.e.*, added as TSLs increase), except for component replacements of a design option at a lower TSL (*i.e.,* switching from a double pane door to a triple pane door, a triple-pane door to a VIG door, single-speed compressor to a variable speed compressor, or a PSC motor to a BLDC motor).

Table V.62 Incremental Design Options Analyzed as Compared to Baseline by Trial Standard Level for Semi-Vertical, Open, and Service Over-Counter Equipment Families

Equipment Class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
SVO.RC.M	Night Curtains			Occupancy Sensors with Dimming	
SVO.SC.M	Night Curtains	BLDC Condenser Fan Motor	VSC	Occupancy Sensors with Dimming	
SOC.RC.M	Baseline			Occupancy Sensors with Dimming; Triple Pane, Krypton-Fill Door	VIG
SOC.SC.M	BLDC Evaporator Fan Motor	BLDC Condenser Fan Motor	VSC; Triple Pane, Argon-Fill Door	Occupancy Sensors with Dimming; VIG	

Note: Design options are cumulative (*i.e.*, added as TSLs increase), except for component replacements of a design option at a lower TSL (*i.e.,* switching from double pane door to triple pane door, a triple-pane door to a VIG door, a single-speed compressor to a variable-speed compressor, a PSC motor to a BLDC motor).

Table V.63 Incremental Design Options Analyzed as Compared to Baseline by Trial Standard Level for Horizontal Equipment Families

Equipment Class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
HZO.RC.M	Baseline				
HZO.RC.L	Baseline				
HZO.SC.M	BLDC Condenser Fan Motor		VSC		
HZO.SC.L	BLDC Condenser Fan Motor		VSC		
HCT.SC.M	Baseline				Occupancy Sensors with Dimming; VIG
HCT.SC.L	Baseline				Occupancy Sensors with Dimming; VSC; VIG
HCT.SC.I	Double Pane, Argon-Fill Door	Triple Pane, Argon-Fill Door			VSC; Occupancy Sensors with Dimming; VIG
HCS.SC.M	PSC Condenser Fan Motor	BLDC Condenser Fan Motor			
HCS.SC.L	BLDC Condenser Fan Motor				

Note: Design options are cumulative (*i.e.*, added as TSLs increase), except for component replacements of design option(s) at lower TSLs (*i.e.,* switching from a double pane door to a triple pane door, a triple-pane door to a VIG door, a single-speed compressor to a variable speed compressor, or a PSC motor to a BLDC motor).

Table V.64 Incremental Design Options Analyzed as Compared to Baseline by Trial Standard Level for Chef Base or Griddle Stand Equipment Classes

Equipment Class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
CB.SC.M	PSC Condenser Fan Motor	BLDC Condenser Fan Motor	VSC		
CB.SC.L	PSC Condenser Fan Motor	BLDC Condenser Fan Motor	VSC		

Note: Design options are cumulative (*i.e.*, added as TSLs increase), except for component replacements of a design options at a lower TSL (*i.e.,* switching from a PSC motor to a BLDC motor or a single-speed compressor to a variable speed compressor).

At TSL 5, the standard represents the max-tech efficiencies for all equipment classes. The change in INPV is expected to range from −$221.7 million to $55.2 million, which represents a change in INPV of −7.3 percent to 1.8 percent, respectively. At this level, free cash flow is estimated to decrease by 33.8 percent compared to the no-new-standards case value of $262.6 million in the year 2028, the year before compliance would be required. In 2028, approximately 30.5 percent of covered CRE shipments are expected to meet the efficiencies required at TSL 5. See table V. for the percent of equipment class shipments that would meet or exceed the efficiencies required at each TSL in 2028 (a year before the modeled compliance year).

The design options DOE analyzed at TSL 5 included the max-tech technologies for all equipment classes. For all semi-vertical and vertical open and transparent door equipment classes, DOE expects manufacturers would likely incorporate occupancy sensors with dimming capability. Open equipment classes would also likely necessitate the use of night curtains. For equipment classes with transparent doors, DOE expects manufacturers would likely need to incorporate

vacuum-insulated glass doors. For most self-contained equipment classes, DOE expects manufacturers would need to incorporate BLDC condenser fan motors and variable-speed compressors. Of the 28 directly analyzed equipment classes, 5 equipment classes (VSC.SC.L, VCS.SC.M, VCT.RC.M, VCT.SC.L, and VCT.SC.M) account for approximately 81.5 percent of industry shipments covered by this final rule. For VCS.SC.L, TSL 5 corresponds to EL 3. For VCS.SC.M, TSL 5 corresponds to EL 2. For VCT.RC.M, TSL 5 corresponds to EL 4. For VCT.SC.L, TSL 5 corresponds to EL 5 and VCT.SC.M, TSL 5 corresponds to EL 6. See section V.A of this document for more information on the efficiency levels analyzed at each TSL.

At max-tech, DOE expects that nearly all manufacturers would need to dedicate notable engineering resources to update equipment designs and source, qualify, and test high-efficiency components across their CRE portfolio. However, most design options analyzed involve more efficient components (*e.g.,* high-efficiency motors) and would not necessitate significant capital investment. At this level, DOE estimates that approximately 55 percent of analyzed equipment class model listings (10,957 out of 19,902 unique basic models) do not meet the efficiency levels required.[151] Self-contained CRE equipment classes account for approximately 86 percent of industry shipments covered by this final rule. Incorporating variable-speed compressors into self-contained CRE designs would likely require additional development and testing time to optimize for different CRE applications to realize maximum efficiency benefits. Capital conversion costs may be necessary for new baseplate tooling if additional modifications are required to accommodate a larger compressor system.

CRE equipment classes with transparent doors (*i.e.,* HCT.SC.I, HCT.SC.L, HCT.SC.M, SOC.RC.M, SOC.SC.M, VCT.RC.L, VCT.RC.M, VCT.SC.H, VCT.SC.I, VCT.SC.L, and VCT.SC.M) account for approximately 41 percent of model listings. For the 84 OEMs that offer directly analyzed CRE with transparent doors, implementing vacuum-insulated glass would require significant engineering resources and testing time to ensure adequate durability of their doors in all commercial settings. Capital conversion costs may be necessary for new fixtures. In interviews and public comments, some manufacturers raised concerns about standards requiring a widespread adoption of vacuum-insulated glass as it is still a relatively new technology in the commercial refrigeration market. Manufacturers pointed to the very limited industry experience with implementing vacuum-insulated glass in CRE applications. Manufacturers expressed concerns about their ability to design and test a full portfolio of CRE with vacuum-insulated glass doors that meet the max-tech efficiencies and maintain their internal performance metrics for durability and safety over the equipment lifetime within the required compliance period (*i.e.,* between the publication of the final rule and the compliance date of the new and amended energy conservation standards). DOE estimates capital conversion costs of $30.6 million and product conversion costs of $223.5 million. Conversion costs total $254.1 million.

DOE acknowledges that most CRE manufacturers offer an exhaustive range of model offerings to appeal to the unique requirements of each CRE consumer. Within a model family, manufacturers offer numerous options to customize CRE to the specifications of restaurant, supermarket, and retail chains and other bulk purchasers of CRE (*e.g.,* Coca-Cola, Pepsi). In interviews, many manufacturers noted that offering a wide-range of models with a high-level of customization and optionality (*e.g.,* different evaporator setups, different lighting arrangements, different door configurations, *etc.*) is critical to succeed in the CRE market. Many manufacturers prioritize offering a breadth of model offerings and specialty CRE, even if sales of each individual model are low. As such, manufacturers still offer hundreds of basic models for equipment classes with low annual shipments. For example, SOC.RC.M accounts for approximately 5 percent of model listings (over 1,000 unique basic models certified in DOE's CCD) even though SOC.RC.M only accounts for 0.1 percent of industry shipments (less than 2,000 units sold in 2024). As discussed in section IV.J.2.c of this document, to avoid underestimating the potential industry investment, DOE's conversion cost model assumes manufacturers would redesign models that do not meet each considered TSL. However, if manufacturers do not have sufficient resources to redesign models within the compliance period, manufacturers would likely discontinue low-volume equipment designs and prioritize redesigning high-volume model offerings.

At TSL 5, the shipment-weighted average MPC for all CRE is expected to increase by 14.2 percent relative to the no-new-standards case shipment-weighted average MPC for all CRE in 2029. Given the projected increase in production costs, DOE expects an estimated 4.1-percent drop in shipments in the year the standard takes effect relative to the no-new-standards case. In the preservation-of-gross-margin-percentage scenario, the large increase in cash flow from the higher MSP outweighs the $254.1 million in conversion costs, causing a small increase in INPV at TSL 5 under this scenario. Under the preservation-of-operating-profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2029, the analyzed compliance year. This reduction in the manufacturer markup and the $254.1 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 5 under the preservation-of-operating-profit scenario. See section IV.J.2.d of this document for further details on the manufacturer markup scenarios.

At TSL 4, the standard represents an intermediate level with less stringent efficiencies required for 10 directly analyzed equipment classes compared to max-tech. The change in INPV is expected to range from −$160.1 million to −$63.5 million, which represents a change in INPV of −5.3 percent to −2.1 percent, respectively. At this level, free cash flow is estimated to decrease by 28.9 percent compared to the no-new-standards case value of $262.6 million in the year 2028, the year before compliance is required. In 2028, approximately 33.4 percent of covered CRE shipments are expected to meet the efficiencies required at TSL 4.

The design options DOE analyzed at TSL 4 are similar to the design options analyzed at TSL 5 except fewer equipment classes with transparent doors would need to incorporate improved door designs and fewer self-contained equipment classes would necessitate the use of variable-speed compressors. DOE estimates that a similar portion of models would require redesign at TSL 4 and TSL 5. DOE estimates that approximately 53 percent of analyzed equipment class model listings (10,574 out of a total of 19,902

[151] DOE's Compliance Certification Database, ''Refrigeration Equipment—Commercial, Single Compartment'' is available at: *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A**. Model count estimates discussed throughout section V.B.2.a and section V.C of this document refer to unique basic models of the directly analyzed equipment classes only. (Last accessed Jan. 31, 2024).

unique basic models) do not meet the TSL 4 efficiency levels. Self-contained equipment classes that may incorporate variable-speed compressors represent approximately 90 percent of self-contained CRE model listings. For the five highest-volume equipment classes, TSL 4 corresponds to lower efficiency levels for 2 equipment classes: VCT.RC.M and VCT.SC.M. For VCS.SC.M, VCS.SC.L, and VCT.SC.L, the efficiencies required at TSL 4 are the same as TSL 5. For VCT.RC.M, TSL 4 corresponds to EL 3. For VCT.SC.M, TSL 4 corresponds to EL 4. At this level, DOE expects that VCT.RC.M and VCT.SC.M would incorporate triple-pane glass with krypton fill and argon fill, respectively. The 4 self-contained equipment classes with the highest-volume shipments (VCS.SC.L, VCS.SC.M, VCT.SC.L, and VCT.SC.M) would likely necessitate the use of variable-speed compressors.

Similar to TSL 5, DOE expects manufacturers would spend development time updating equipment designs to incorporate high-efficiency components. Manufacturers of CRE with transparent doors may need to invest in new fixtures to accommodate additional panes of glass into CRE designs. Unlike at TSL 5 where DOE expects all transparent door CRE equipment classes would incorporate vacuum-insulated glass doors to meet the efficiency levels required, only two directly analyzed equipment classes, SOC.SC.M and VCT.SC.L, (which represent approximately 9 percent of transparent door CRE model listings) would likely necessitate vacuum-insulated glass doors to meet at TSL 4. However, DOE expects that manufacturers of VCT.RC.L, VCT.RC.M, and SOC.RC.M (which represent approximately 63 percent of transparent door CRE model listings) would likely incorporate triple-pane glass doors with krypton fill and manufacturers of HCT.SC.I and VCT.SC.M (which represent approximately 25 percent of transparent door CRE model listings) would incorporate triple-pane glass doors with argon fill. As previously discussed, many manufacturers raised concerns about the widespread adoption of vacuum-insulated glass because the industry does not have widescale experience integrating this technology into their designs. In interviews and public comments, some manufacturers also raised concerns about the limited supply of krypton gas available to the market. Currently, few CRE designs have triple-pane glass doors with krypton fill as nearly all CRE with double-pane or triple-pane doors are manufactured with argon fill, and single-pane doors do not have an inert gas fill. DOE estimates capital conversion costs of $27.5 million and product conversion costs of $196.4 million. Conversion costs total $223.9 million.

As previously discussed with TSL 5, if manufacturers do not have sufficient resources to redesign models within the compliance period, manufacturers would likely discontinue low-volume equipment designs and prioritize redesigning high-volume model offerings.

At TSL 4, the shipment-weighted average MPC for all CRE is expected to increase by 4.8 percent relative to the no-new-standards case shipment-weighted average MPC for all CRE in 2029. Given the projected increase in production costs, DOE expects an estimated 1.8-percent drop in shipments in the year the standard takes effect relative to the no-new-standards case. In the preservation-of-gross-margin-percentage scenario, the increase in cash flow from the higher MSP is outweighed by the $223.9 million in conversion costs, causing a decrease in INPV at TSL 4 under this scenario. Under the preservation-of-operating-profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2029, the analyzed compliance year. This reduction in the manufacturer markup and the $223.9 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 4 under the preservation-of-operating-profit scenario.

At TSL 3, the standard represents an intermediate level with less stringent efficiencies required for 12 directly analyzed equipment classes compared to TSL 4. The change in INPV is expected to range from −$78.7 million to −$51.3 million, which represents a change in INPV of −2.6 percent to −1.7 percent, respectively. At this level, free cash flow is estimated to decrease by 15.9 percent compared to the no-new-standards case value of $262.6 million in the year 2028, the year before compliance is required. In 2028, approximately 49.0 percent of covered CRE shipments are expected to meet the efficiencies required at TSL 3.

At TSL 3, the efficiency levels required for most open (*i.e.,* equipment classes without doors) and transparent door equipment classes are lower than the efficiency levels required at TSL 4. DOE estimates that notably fewer models would require redesign at TSL 3 compared to TSL 4 and TSL 5. At this level, approximately 37 percent of analyzed equipment class model listings (7,306 out of 19,902 unique basic models) do not meet the efficiency levels required. DOE expects manufacturers could meet TSL 3 without implementing occupancy sensors with dimming capability, triple-pane doors with krypton fill, or vacuum-insulated glass doors, alleviating industry concerns about the availability and supply of krypton gas and vacuum-insulated glass. At this level, the same equipment classes as TSL 4—except for VSC.SC.M, which represents 37 percent of self-contained CRE model listings–would likely incorporate variable-speed compressors. At this level, only 2 equipment classes, HCT.SC.I and SOC.SC.M (together representing 7 percent of transparent door CRE model listings), would likely incorporate improved door designs compared to 7 equipment classes that would likely incorporate improved door designs at TSL 4 (together representing 97 percent of transparent door CRE model listings). For the 5 highest-volume equipment classes, TSL 3 corresponds to lower efficiency levels for 4 equipment classes: VCS.SC.M, VCT.RC.M, VCT.SC.L, and VCT.SC.M. For VCS.SC.M, TSL 3 corresponds to EL 1. For VCT.RC.M, TSL 3 corresponds to baseline efficiency (*i.e.,* EL 0). For VCT.SC.L, TSL 3 corresponds to EL 2. For VCT.SC.M, TSL 3 corresponds to EL 2. For VCS.SC.L, the efficiencies required at TSL 3 are the same as TSL 4. At this level, product conversion costs may be necessary to source, qualify, and test high-efficiency components—but to a lesser extent than at higher TSLs. Some manufacturers of self-contained equipment classes may need to invest in new baseplate tooling if incorporating variable-speed compressors requires additional modifications to CRE designs. Manufacturers of CRE with transparent doors may need to invest in new fixtures to accommodate additional panes of glass into CRE designs. DOE estimates capital conversion costs of $19.1 million and product conversion costs of $98.5 million. Conversion costs total $117.7 million.

At TSL 3, the shipment-weighted average MPC for all CRE is expected to increase by 1.4 percent relative to the no-new-standards case shipment-weighted average MPC for all CRE in 2029. Given the relatively small projected increase in production costs, DOE does not project a notable drop in shipments in the year the standard takes

effect. In the preservation-of-gross-margin-percentage scenario, the increase in cash flow from the higher MSP is slightly outweighed by the $117.7 million in conversion costs, causing a small decrease in INPV at TSL 3 under this scenario. Under the preservation-of-operating-profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2029, the analyzed compliance year. This reduction in the manufacturer markup and the $117.7 million in conversion costs incurred by manufacturers cause a small negative change in INPV at TSL 3 under the preservation-of-operating-profit scenario.

At TSL 2, the standard represents an intermediate level with less stringent efficiencies required for 11 directly analyzed equipment classes compared to TSL 3. The change in INPV is expected to range from −$27.5 million to −$23.1 million, which represents a change in INPV of −0.9 percent to −0.8 percent, respectively. At this level, free cash flow is estimated to decrease by 6.0 percent compared to the no-new-standards case value of $262.6 million in the year 2028, the year before compliance is required. In 2028, approximately 60.7 percent of covered CRE shipments are expected to meet the efficiencies required at TSL 2.

At this level, the efficiency levels required are lower than TSL 3 for less than half of the directly analyzed equipment classes, which represent approximately 19 percent of industry shipments. DOE estimates that a similar portion of models would require redesign at TSL 2 and TSL 3. At this level, approximately 33 percent of analyzed equipment class model listings (6,631 out of 19,902 unique basic models) do not meet the efficiency levels required. DOE does not expect manufacturers would incorporate variable-speed compressors to meet efficiencies at TSL 2. At this level, DOE expects manufacturers would implement BLDC condenser fan motors for all self-contained equipment classes. Only HCT.SC.I would likely need to incorporate improved door designs. Open equipment classes would likely necessitate the use of night curtains. For the five highest-volume equipment classes, TSL 2 corresponds to lower efficiency levels for 3 equipment classes: VCS.SC.L, VCT.SC.L, and VCT.SC.M. For VCS.SC.L, TSL 2 corresponds to EL 2. For VCT.SC.L and VCT.SC.M, the TSL 2 corresponds to EL 1. For VSC.SC.M and VCT.RC.M, the efficiencies at TSL 2 are the same as TSL 3. At this level, DOE expects industry would incur minimal capital conversion costs. The lower efficiency levels required for 2 equipment classes—VCS.SC.L and VCT.SC.M—drive the drop in product conversion costs at this level. For VCS.SC.L and VCT.SC.M, DOE believes manufacturers could meet TSL 2 efficiencies by incorporating more efficient condenser fan motors with minimal development effort, unlike at TSL 3, which may necessitate implementing variable-speed compressors. DOE estimates capital conversion costs of $0.3 million and product conversion costs of $46.4 million. Conversion costs total $46.7 million.

At TSL 2, the shipment-weighted average MPC for all CRE is expected to increase by 0.2 percent relative to the no-new-standards case shipment-weighted average MPC for all CRE in 2029. Given the relatively small projected increase in production costs, DOE does not project a notable drop in shipments in the year the standard takes effect. In the preservation-of-gross-margin-percentage scenario, the increase in cash flow from the higher MSP is slightly outweighed by the $46.7 million in conversion costs, causing a slight decrease in INPV at TSL 2 under this scenario. Under the preservation-of-operating-profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2028, the analyzed compliance year. This reduction in the manufacturer markup and the $46.7 million in conversion costs incurred by manufacturers cause a small negative change in INPV at TSL 2 under the preservation-of-operating-profit scenario.

At TSL 1, the standard represents the minimum efficiency level with positive LCC savings. The change in INPV is expected to range from −$24.7 million to −$20.8 million, which represents a change in INPV of −0.8 percent to −0.7 percent, respectively. At this level, free cash flow is estimated to decrease by 5.4 percent compared to the no-new-standards case value of $262.6 million in the year 2028, the year before compliance is required. In 2028, approximately 64.1 percent of covered CRE shipments are expected to meet the efficiencies required at TSL 1.

At this level, the efficiency levels correspond to baseline for 8 directly analyzed equipment classes, EL 1 for 19 equipment classes, and EL 2 for 1 equipment class (VCS.SC.H). DOE estimates that a similar portion of models would require redesign at TSL 1, TSL 2, and TSL 3. At this level, approximately 33 percent of analyzed equipment class model listings (6,504 out of 19,902 unique basic models) do not meet the efficiency levels required. DOE expects most self-contained equipment classes would need to incorporate higher-efficiency fan motors (*i.e.,* BLDC evaporator or condenser fan motors or PSC evaporator fan motors for chef bases). HCT.SC.I may necessitate the use of double-pane argon-fill doors to meet TSL 1 efficiencies. DOE expects manufacturers could TSL 1 efficiencies without investing in new tooling or equipment. Product conversion costs are driven by incorporating high-efficiency components into CRE designs. DOE estimates product conversion costs of $42.0 million.

At TSL 1, the shipment-weighted average MPC for all CRE is expected to increase by 0.2 percent relative to the no-new-standards case shipment-weighted average MPC for all CRE in 2029. Given the relatively small projected increase in production costs, DOE does not project a notable drop in shipments in the year the standard takes effect. In the preservation-of-gross-margin-percentage scenario, the minor increase in cash flow from the higher MSP slightly outweighs the $42.0 million in conversion costs, causing a minor increase in INPV at TSL 1 under this scenario. Under the preservation-of-operating-profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2029, the analyzed compliance year. This reduction in manufacturer markup and the $42.0 million in conversion costs incurred by manufacturers cause a minor negative change in INPV at TSL 1 under the preservation-of-operating-profit scenario.

Table V.65 Percentages of 2028 No-New-Standards Case Shipments that Meet Each TSL by Directly Analyzed Equipment Class

Equipment Family	Equipment Class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Vertical Equipment	VOP.RC.M	63.5%	63.5%	63.5%	52.6%	52.6%
	VOP.RC.L	63.5%	63.5%	63.5%	52.6%	52.6%
	VOP.SC.M	10.1%	8.6%	4.9%	3.7%	3.7%
	VCT.RC.M	100.0%	100.0%	100.0%	51.6%	43.3%
	VCT.RC.L	100.0%	100.0%	100.0%	23.6%	14.6%
	VCT.SC.H	72.7%	59.1%	59.1%	59.1%	27.3%
	VCT.SC.M	57.4%	57.4%	41.8%	39.8%	38.8%
	VCT.SC.L	59.8%	59.8%	10.0%	9.9%	9.9%
	VCT.SC.I	100.0%	100.0%	100.0%	100.0%	51.9%
	VCS.SC.H	75.0%	75.0%	75.0%	75.0%	25.0%
	VCS.SC.M	55.4%	55.4%	55.4%	29.7%	29.7%
	VCS.SC.L	47.8%	47.6%	3.8%	3.8%	3.8%
	VCS.SC.I	92.1%	85.3%	32.5%	32.5%	32.5%
Semi-Vertical Equipment	SVO.RC.M	42.2%	42.2%	42.2%	30.6%	30.6%
	SVO.SC.M	48.9%	40.3%	32.2%	30.5%	30.5%
Service-Over-Counter Equipment	SOC.RC.M	100.0%	100.0%	100.0%	37.9%	37.2%
	SOC.SC.M	58.9%	56.0%	51.2%	44.3%	44.3%
Horizontal Equipment	HZO.RC.M	100.0%	100.0%	100.0%	100.0%	100.0%
	HZO.RC.L	100.0%	100.0%	100.0%	100.0%	100.0%
	HZO.SC.M	92.8%	92.8%	45.1%	45.1%	45.1%
	HZO.SC.L	92.8%	92.8%	45.1%	45.1%	45.1%
	HCT.SC.M	100.0%	100.0%	100.0%	100.0%	13.4%
	HCT.SC.L	100.0%	100.0%	100.0%	100.0%	39.8%
	HCT.SC.I	74.3%	71.0%	71.0%	71.0%	39.8%
	HCS.SC.M	76.5%	41.2%	41.2%	41.2%	41.2%
	HCS.SC.L	60.0%	60.0%	60.0%	60.0%	60.0%
Chef Bases	CB.SC.M	76.9%	76.9%	53.8%	53.8%	53.8%
	CB.SC.L	69.2%	53.8%	38.5%	38.5%	38.5%
Total		61.4%	60.7%	49.0%	33.4%	30.5%

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of amended energy conservation standards on direct employment in the CRE industry, DOE used the GRIM to estimate the domestic labor expenditures and number of direct employees in the no-new-standards case and in each of the standards cases during the analysis period. DOE calculated these values using statistical data from the 2021 *ASM,*[152] BLS employee compensation data,[153] results of the engineering analysis, and manufacturer interviews.

Labor expenditures related to equipment manufacturing depend on the labor intensity of the equipment, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the total MPCs by the labor percentage of MPCs. The total labor expenditures in the GRIM were then converted to total production employment levels by dividing production labor expenditures by the average fully burdened wage multiplied by the average number of hours worked per year per production worker. To do this, DOE relied on *ASM* inputs: Production Workers Annual Wages, Production Workers Annual Hours, Production Workers for Pay Period, and Number of Employees. DOE

[152] U.S. Census Bureau, *Annual Survey of Manufactures.* ''Summary Statistics for Industry Groups and Industries in the U.S (2021).'' Available at *www.census.gov/data/tables/time-series/econ/asm/2018-2021-asm.html* (last accessed April 11, 2024).

[153] U.S. Bureau of Labor Statistics. *Employer Costs for Employee Compensation—March 2024.* June 18, 2024. Available at *www.bls.gov/bls/news-release/ecec.htm#current* (last accessed Aug. 22, 2024).

also relied on BLS employee compensation data to determine the fully burdened wage ratio. The fully burdened wage ratio factors in paid leave, supplemental pay, insurance, retirement and savings, and legally required benefits.

The total production employees number was then multiplied by the U.S. labor percentage to convert total production employment to total domestic production employment. The U.S. labor percentage represents the industry fraction of domestic manufacturing production capacity for the covered equipment. This value is derived from manufacturer interviews, equipment database analysis, DOE's shipments analysis, and publicly available information. DOE estimates that approximately 77 percent of CRE covered by this final rule are produced domestically.

The domestic production employees estimate covers production line workers, including line supervisors, who are directly involved in fabricating and assembling equipment within the OEM facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor.[154] DOE's estimates only account for production workers who manufacture the specific equipment covered by this final rule.

Non-production workers account for the remainder of the direct employment figure. The non-production employees category covers domestic workers who are not directly involved in the production process, such as sales, engineering, human resources, management, *etc.*[155] Using the number of domestic production workers calculated above, non-production domestic employees are extrapolated by multiplying the ratio of non-production workers in the industry compared to production employees. DOE assumes that this employee distribution ratio remains constant between the no-new-standards case and standards cases.

Using the GRIM, DOE estimates that in the absence of new energy conservation standards, there would be 11,792 domestic production and non-production workers for CRE in 2029. shows the range of impacts of energy conservation standards on U.S. manufacturing employment in the CRE industry. The discussion below provides a qualitative evaluation of the range of potential impacts presented in table V.66.

Table V.66 Direct Employment Impacts for Domestic CRE Manufacturers in 2029*

	No-New-Standards Case	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Direct Employment in 2029 (Production Workers + Non-Production Workers)	11,792	11,785 to 11,792	8,391 to 11,783	7,388 to 11,699	6,028 to 11,616	5,778 to 11,642
Potential Changes in Direct Employment in 2029	-	(7) to 0	(3,401) to (9)	(4,404) to (93)	(5,764) to (176)	(6,014) to (150)

*DOE presents a range of potential employee impacts. Numbers in parentheses indicate negative numbers.

The direct employment impacts in represent the potential domestic employment changes that could result following the compliance date for CRE in this final rule. The upper bound estimate corresponds to a potential change in the number of domestic workers that would result from new and amended energy conservation standards if manufacturers continue to produce the same scope of covered equipment within the United States after compliance takes effect. For the lower bound estimate, DOE maintained its methodology from the August 2024 NODA for this final rule. 89 FR 68788, 68828–68829.

The lower bound estimate conservatively assumes that some domestic manufacturing either is eliminated or moves abroad at more stringent efficiency levels. For levels that require capital investment or higher per-unit labor content, DOE assumed that some manufacturing could move abroad as relocating production to lower-labor cost countries could become increasingly attractive. At relevant TSLs, DOE used results of the shipments analysis (*i.e.,* the percent of shipments that would not meet the standard) to estimate the portion of domestic production that would shift to foreign countries. However, DOE notes that most of the design options analyzed in the engineering analysis require manufacturers to purchase more-efficient components from suppliers. These components do not require significant additional labor to assemble or significant production line updates. As in the August 2024 NODA, for this final rule, DOE modeled an incremental increase in labor costs associated with implementing improved door designs (*i.e.,* moving to double-pane, triple-pane, or VIG door designs). Incorporating vacuum-insulated panels could lead to greater labor requirements; however, as discussed in section IV.B.1 of this document, DOE did not consider vacuum-insulated panels as a design option in its engineering analysis. At the adopted TSL (*i.e.,* TSL 3), DOE projects that nearly half of industry shipments will meet the required efficiency levels by the 2029 compliance date in the no-new-standards case. Additionally, DOE notes that only two directly analyzed equipment classes would likely incorporate improved door designs. As such, DOE does not expect TSL 3 will necessitate large capital costs or significantly higher per-unit labor content. Furthermore, DOE notes that most basic models (63 percent of model listings) meet TSL 3.

Additional detail on the analysis of direct employment can be found in chapter 12 of the final rule TSD. Additionally, the employment impacts discussed in this section are

[154] U.S. Census Bureau, ''Definitions and Instructions for the Annual Survey of Manufactures, MA–10000.'' Available at *www2.census.gov/programs-surveys/asm/technical-documentation/questionnaire/2021/instructions/MA_10000_Instructions.pdf* (last accessed April 11, 2024).

[155] *Id.*

independent of the employment impacts from the broader U.S. economy, which are documented in chapter 16 of the final rule TSD.

c. Impacts on Manufacturing Capacity

In interviews conducted in advance of the October 2023 NOPR, most manufacturers noted potential manufacturing capacity concerns relating to widespread adoption of increased insulation thickness or VIPs. As discussed in section IV.B.1 of this document, DOE excluded these technologies from further consideration in the engineering analysis and, thus, DOE does not expect manufacturers would need to increase insulation thickness or incorporate VIPs to meet any of the efficiency levels analyzed in this final rule. Furthermore, DOE revised its baseline insulation thickness assumptions used in the October 2023 NOPR in response to stakeholder comments. The revised insulation thicknesses analyzed in the August 2024 NODA and this final rule generally align with the insulation thicknesses analyzed in the March 2014 Final Rule,[156] which are also consistent with stakeholder comments and DOE's test data.

Therefore, when considering potential new and amended energy conservation standards in isolation, DOE believes manufacturers would be able to maintain manufacturing capacity levels and continue to meet market demand under new and amended energy conservation standards. However, multiple manufacturers in confidential interviews and public comments in response to the October 2023 NOPR and August 2024 NODA raised concerns about technical and laboratory resource constraints due to overlapping regulations over a short time period. Specifically, these manufacturers mentioned the testing and redesign required for new safety and industry standards and the various regulations necessitating the transition to low-GWP refrigerants. In confidential interviews and comments in response to the October 2023 NOPR and August 2024 NODA, some manufacturers stated that they are already experiencing testing laboratory shortages, which would be further exacerbated by DOE energy conservation standards if DOE adopts more stringent standards that necessitate the redesign of the majority of basic models. Manufacturers noted that the ongoing supply chain constraints further strain technical and laboratory resources as manufacturers are forced to identify and qualify new component suppliers due to shortages and long lead times.

At the adopted TSL (*i.e.,* TSL 3), DOE estimates that approximately 63 percent of analyzed equipment class model listings (12,596 out of 19,902 unique basic models) meet the efficiency levels required. Furthermore, DOE is extending the compliance period from the 3-years analyzed in the October 2023 NOPR to 4-years in this final rule to help mitigate concerns about laboratory and engineering resource constraints.

d. Impacts on Subgroups of Manufacturers

Small business, low volume, and niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average, could be affected disproportionately. As discussed in section IV.J of this document, using average cost assumptions to develop an industry cash flow estimate is inadequate to assess differential impacts among manufacturer subgroups.

For CRE, DOE identified and evaluated the impact of new and amended conservation standards on one subgroup: small manufacturers. The Small Business Administration (''SBA'') defines a ''small business'' as having 1,250 employees or fewer for NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing,'' which includes CRE manufacturing. Based on this definition, DOE identified 20 domestic OEMs in the CRE industry that qualify as a ''small business.''

For a discussion of the impacts on the small manufacturer subgroup, see the regulatory flexibility analysis in section VI.B of this document or chapter 12 of the final rule TSD.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the equipment/product-specific regulatory actions of other Federal agencies and States that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing equipment. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency. DOE evaluates equipment/product-specific regulations that will take effect approximately 3 years before or after the estimated 2029 compliance date of any new and amended energy conservation standards for CRE (2026–2032).

The DOE energy conservation standards regulations potentially contributing to cumulative regulatory burden are presented in table V.67. In addition to the proposed and adopted energy conservation standards rulemakings identified, DOE also considers refrigerant regulations, such as the October 2023 EPA Final Rule, in its cumulative regulatory burden analysis. DOE discusses these refrigerant regulations in the subsection ''Refrigerant Regulations'' included in this section.

[156] DOE assumed an insulation thickness of 1.5 inches for medium- and high-temperature equipment, 2.0 inches for low-temperature equipment, and 2.5 inches for ice cream temperature equipment. See Table 5A.2.2 Baseline Specifications in the 2014 Final rule TSD at *www.regulations.gov/document/EERE-2010-BT-STD-0003-0102.*

Table V.67 Compliance Dates and Expected Conversion Expenses of Federal Energy Conservation Standards Affecting Commercial Refrigeration Equipment OEMs

Federal Energy Conservation Standard	Number of OEMs*	Number of OEMs Affected by Today's Rule**	Approx. Standards Compliance Year	Industry Conversion Costs *(Millions)*	Industry Conversion Costs / Equipment Revenue***
Automatic Commercial Ice Makers† 88 FR 30508 (May 11, 2023)	23	7	2027	$15.9 (2022$)	0.6%
Refrigerated Bottled or Canned Beverage Vending Machines† 88 FR 33968 (May 25, 2023)	5	1	2028	$1.5 (2022$)	0.2%
Room Air Conditioners 88 FR 34298 (May 26, 2023)	8	1	2026	$24.8 (2021$)	0.4%
Microwave Ovens 88 FR 39912 (June 20, 2023)	18	3	2026	$46.1 (2021$)	0.7%
Dehumidifiers† 88 FR 76510 (November 6, 2023)	20	2	2028	$6.9 (2022$)	0.4%
Consumer Furnaces 88 FR 87502 (December 18, 2023)	14	2	2028	$162.0 (2022$)	1.8%
Refrigerators, Refrigerator-Freezers, and Freezers 89 FR 3026 (January 17, 2024)	63	10	2029 and 2030‡	$830.3 (2022$)	1.3%
Consumer Conventional Cooking Products 89 FR 11548 (February 14, 2024)	35	4	2028	$66.7 (2022$)	0.3%
Consumer Clothes Dryers 89 FR 18164 (March 12, 2024)	19	3	2028	$180.7 (2022$)	1.4%
Residential Clothes Washers 89 FR 19026 (March 15, 2024)	22	4	2028	$320.0 (2022$)	1.8%
Dishwashers 89 FR 31398 (April 24, 2024)	21	4	2027	$126.9 (2022$)	2.1%
Miscellaneous Refrigeration Products 89 FR 38762 (May 7, 2024)	49	13	2029	$130.7 (2022$)	2.9%

Walk-in Coolers and Freezers††	87	11	2028	$91.5 (2023$)	0.6%

* This column presents the total number of OEMs identified in the energy conservation standard rule that is contributing to cumulative regulatory burden.
** This column presents the number of OEMs producing CRE that are also listed as OEMs in the identified energy conservation standard that is contributing to cumulative regulatory burden.
*** This column presents industry conversion costs as a percentage of equipment revenue during the conversion period. Industry conversion costs are the upfront investments manufacturers must make to sell compliant products/equipment. The revenue used for this calculation is the revenue from just the covered product/equipment associated with each row. The conversion period is the time frame over which conversion costs are made and lasts from the publication year of a final rule to the compliance year of the energy conservation standard. The conversion period typically ranges from 3 to 5 years, depending on the rulemaking.
† These rulemakings are at the NOPR stage, and all values are subject to change until finalized through publication of a final rule.
‡ For the refrigerators, refrigerator-freezers, and freezers energy conservation standards direct final rule, the compliance year (2029 or 2030) varies by product class.
†† At the time of issuance of this final rule, the WICFs final rule has been issued and is pending publication in the *Federal Register.* Once published, the final rule pertaining to WICFs will be available at: *www.regulations.gov/docket/EERE-2017-BT-STD-0009.*

Refrigerant Regulations

The October 2023 EPA Final Rule restricts the use of HFCs in specific sectors or subsectors, including use in certain CRE covered by this rulemaking. Consistent with the October 2023 NOPR, DOE considered the impacts of the refrigerant transition in this final rule analysis. DOE understands that switching from non-flammable to flammable refrigerants (*e.g.,* R–290) requires time and investment to redesign CRE models and upgrade production facilities to accommodate the additional structural and safety precautions required. Compliance with the October 2023 EPA Final Rule ranges from January 1, 2025 to January 1, 2027 for categories relevant to CRE covered by this rulemaking (see table IV.5 for a list of compliance dates for the October 2023 EPA Final Rule applicable to CRE). Therefore, DOE expects manufacturers will complete the transition to low-GWP refrigerants in compliance with EPA regulation prior to the expected 2029 DOE compliance date for CRE. As discussed in section IV.C.1.a of this document, DOE expects CRE manufacturers will transition self-contained CRE covered by this rulemaking to R–290 to comply with anticipated refrigeration regulations. See section IV.C.1 of this document for additional information on refrigerant assumptions in the engineering analysis.

Consistent with the October 2023 NOPR and August 2024 NODA, in this final rule, DOE accounted for the costs associated with redesigning CRE to make use of flammable refrigerants and retrofitting production facilities to accommodate flammable refrigerants in the GRIM. DOE considers the expenses associated with the refrigerant transition as part of the analytical baseline. In other words, manufacturers would need to comply with the October 2023 EPA Final Rule regardless of whether or not DOE amends standards. Therefore, DOE incorporated the refrigerant transition expenses into both the no-new-standards case and standards cases. For the October 2023 NOPR, DOE relied on manufacturer feedback in confidential interviews, a report prepared for EPA,[157] results of the engineering analysis, and investment estimates submitted by NAMA and AHRI in response to the June 2022 Preliminary Analysis to estimate the industry refrigerant transition costs. 88 FR 70196, 70284. For the August 2024 NODA, DOE updated its R&D estimate to reflect feedback from written comments in response to the October 2023 NOPR. 89 FR 68788, 68800. DOE also adjusted the timeline of when manufacturers would need to make investments related to the refrigerant transition to align with the revised compliance dates for CRE in the October 2023 EPA Final Rule. *Id.* DOE maintained the approach from the August 2024 NODA for this final rule, however, as this final rule only analyzes non-large self-contained CRE (see table IV. for the TDA/volume ranges for the seven relevant equipment classes) and remote-condensing CRE, DOE excluded the investments associated with large self-contained CRE in its GRIM.

Based on feedback, DOE assumed that the transition to low-GWP refrigerants would require industry to invest approximately $13.6 million in R&D and $17.7 million in capital expenditures (*e.g.,* investments in new charging equipment, leak detection systems, *etc.*) from 2024 (the final rule reference year) and 2027 (the latest EPA compliance date for CRE covered by this rulemaking). Consistent with the October 2023 NOPR, DOE notes that its refrigerant transition estimates of $13.6 million in R&D and $17.7 million capital expenditures reflect an estimate of *future* (2023–2025 for the October 2023 NOPR and 2024–2027 for this final rule) investments industry would incur to comply with Federal or State refrigerant regulations. DOE acknowledges that manufacturers have already invested a significant amount of time and capital into transitioning CRE to low-GWP refrigerants. However, as the GRIM developed for this rulemaking only analyzes future cash flows, starting with the reference year of the analysis (2024) and continuing 30 years after the analyzed compliance year, the MIA conducted for this final rule only reflects changes in annual cash flow and associated refrigerant transition expenses starting in 2024.

3. National Impact Analysis

This section presents DOE's estimates of the NES and the NPV of consumer benefits that would result from each of the TSLs considered as potential amended standards.

a. National Energy Savings

To estimate the energy savings attributable to potential new and amended standards for CRE, DOE compared their energy consumption under the no-new-standards case to

[157] See pp. 5–113 of the ''Global Non-CO_2 Greenhouse Gas Emission Projections & Marginal Abatement Cost Analysis: Methodology Documentation'' (2019). Available at *www.epa.gov/sites/default/files/2019-9/documents/nonco2_methodology_report.pdf.*

their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of equipment purchased during the 30-year period that begins in the year of anticipated compliance with new and amended standards (2029–2058). Table V. presents DOE's projections of the NES for each TSL considered for CRE. The savings were calculated using the approach described in section IV.H.2 of this document.

Table V.68 Cumulative National Energy Savings for CRE; 30 Years of Shipments (2029–2058)

	Trial Standard Level				
	1	2	3	4	5
	quads				
Primary energy	0.24	0.28	1.08	1.46	1.57
FFC energy	0.25	0.29	1.11	1.50	1.61

OMB Circular A–4 [158] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of equipment shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[159] The review timeframe established in EPCA is generally not synchronized with the equipment lifetime, equipment manufacturing cycles, or other factors specific to CRE. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in table V.. The impacts are counted over the lifetime of CRE purchased during the period 2029–2037.

Table V.69 Cumulative National Energy Savings for CRE; 9 Years of Shipments (2029–2037)

	Trial Standard Level				
	1	2	3	4	5
	quads				
Primary energy	0.07	0.08	0.31	0.41	0.44
FFC energy	0.07	0.08	0.32	0.43	0.45

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for CRE. In accordance with OMB Circular A–4, DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V. shows the consumer NPV results with impacts counted over the lifetime of equipment purchased during the period 2029–2058.

Table V.70 Cumulative Net Present Value of Consumer Benefits for CRE; 30 Years of Shipments (2029–2058)

Discount Rate	Trial Standard Level				
	1	2	3	4	5
	billion 2023$				
3 percent	0.60	0.74	3.43	1.89	-8.45
7 percent	0.24	0.29	1.32	0.22	-5.36

The NPV results based on the aforementioned 9-year analytical period are presented in table V.71. The impacts are counted over the lifetime of equipment purchased during the period 2029–2058. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's

[158] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* Available at *www.whitehouse.gov/omb/information-for-agencies/circulars* (last accessed July 1, 2024). DOE used the prior version of Circular A–4 (September 17, 2003) in accordance with the effective date of the November 9, 2023 version. Available at *www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* (last accessed July 20, 2024).

[159] EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(m)) While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

analytical methodology or decision criteria.

Table V.71 Cumulative Net Present Value of Consumer Benefits for CRE; 9 Years of Shipments (2029–2037)

Discount Rate	Trial Standard Level				
	1	2	3	4	5
	billion 2023$				
3 percent	0.23	0.29	1.22	0.57	-3.33
7 percent	0.12	0.15	0.62	0.03	-2.80

The previous results reflect the use of a default trend to estimate the change in price for CRE over the analysis period (see section IV.F.1 of this document). DOE also conducted a sensitivity analysis where CRE prices were assumed to remain constant over the analysis period. This analysis was considered as a part of the low economic benefits scenario, which is based on low economic growth with lower electricity price declines and lower floorspace projections for shipments. See Appendix 10C of the final rule TSD for full results of all NIA sensitivities conducted.

c. Indirect Impacts on Employment

DOE estimates that amended energy conservation standards for CRE will reduce energy expenditures for consumers of those equipment, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered. There are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2029–2033), where these uncertainties are reduced.

The results suggest that the adopted standards are likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the final rule TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Equipment

As discussed in section III.F.1.d of this document, DOE has concluded that the standards adopted in this final rule will not lessen the utility or performance of the CRE under consideration in this rulemaking. Manufacturers of this equipment generally already offer units that meet or exceed the adopted standards.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new or amended standards. As discussed in section III.F.1.e of this document, EPCA directs the Attorney General of the United States (''Attorney General'') to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination in writing to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. To assist the Attorney General in making this determination, DOE provided the Department of Justice (''DOJ'') with copies of the October 2023 NOPR and the October 2023 NOPR TSD for review. In its assessment letter responding to DOE, DOJ concluded that the proposed energy conservation standards for CRE are unlikely to have a significant adverse impact on competition. DOE is publishing the Attorney General's assessment at the end of this final rule.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. Chapter 15 of the final rule TSD presents the estimated impacts on electricity-generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from potential energy conservation standards for CRE is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and GHGs. Table V. provides DOE's estimate of cumulative emissions reduction expected to result from the TSLs considered in this rulemaking. The emissions were calculated using the multipliers discussed in section IV.K of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the final rule TSD.

Table V.72 Cumulative Emissions Reduction for CRE Shipped During the Period 2029–2058

	Trial Standard Level				
	1	2	3	4	5
Electric Power Sector Emission					
CO_2 (*million metric tons*)	3.99	4.61	17.9	24.2	25.9
CH_4 (*thousand tons*)	0.29	0.34	1.32	1.78	1.91
N_2O (*thousand tons*)	0.04	0.05	0.18	0.25	0.26
SO_2 (*thousand tons*)	1.86	2.15	8.35	11.3	12.1
NO_X (*thousand tons*)	1.32	1.52	5.91	7.99	8.55
Hg (*tons*)	0.01	0.01	0.04	0.06	0.06
Upstream Emissions					
CO_2 (*million metric tons*)	0.41	0.47	1.83	2.48	2.66
CH_4 (*thousand tons*)	37.1	43.0	167	226	242
N_2O (*thousand tons*)	0.00	0.00	0.01	0.01	0.01
SO_2 (*thousand tons*)	6.37	7.37	28.6	38.7	41.4
NO_X (*thousand tons*)	0.02	0.03	0.11	0.15	0.16
Hg (*tons*)	0.00	0.00	0.00	0.00	0.00
Total FFC Emissions					
CO_2 (*million metric tons*)	4.39	5.09	19.7	26.7	28.6
CH_4 (*thousand tons*)	37.4	43.3	168	228	243
N_2O (*thousand tons*)	0.04	0.05	0.19	0.26	0.28
SO_2 (*thousand tons*)	8.23	9.52	36.9	50.0	53.5
NO_X (*thousand tons*)	1.34	1.55	6.02	8.14	8.71
Hg (*tons*)	0.01	0.01	0.04	0.06	0.06

* 0.00 indicates values less than 0.005

As part of the analysis for this rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 that DOE estimated for each of the considered TSLs for CRE. Section IV.L of this document discusses the two separate sets of estimated SC-CO_2 values that DOE used. Table V.73 and table V.74 presents the value of CO_2 emissions reductions at each TSL for each of the SC-CO_2 cases. The time-series of annual values is presented for the selected TSL in chapter 14 of the final rule TSD.

Table V.73 Present Value of CO_2 Emissions Reduction for CRE Shipped During the Period 2029–2058 (2023 SC-GHG Estimates)

TSL	SC-CO_2 Case		
	Near-term Ramsey Discount Rate		
	2.5%	2.0%	1.5%
	billion 2023$		
1	0.54	0.93	1.65
2	0.63	1.07	1.91
3	2.43	4.16	7.42
4	3.29	5.63	10.04
5	3.52	6.02	10.7

Table V.74 Present Value of CO_2 Emissions Reduction for CRE Shipped During the Period 2029–2058 (2021 Interim SC-GHG Estimates)

TSL	SC-CO_2 Case			
	Discount Rate and Statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	billion 2023$			
1	0.05	0.20	0.30	0.59
2	0.05	0.23	0.35	0.69
3	0.21	0.88	1.37	2.66
4	0.28	1.18	1.85	3.59
5	0.30	1.27	1.98	3.84

As discussed in section IV.L.2 of this document, DOE estimated the climate benefits likely to result from the reduced emissions of methane and N_2O that DOE estimated for each of the considered TSLs for CRE. Table V.75 and table V.76 presents the value of the CH_4 emissions reduction at each TSL for each of the SC-CH_4 cases. Table V. and table V.78 presents the value of the N_2O emissions reduction at each TSL for each of the SC-N_2O cases. The time-series of annual values is presented for the selected TSL in chapter 14 of the final rule TSD.

Table V.75 Present Value of Methane Emissions Reduction for CRE Shipped During the Period 2029–2058 (2023 SC-GHG Estimates)

TSL	SC-CH_4 Case		
	Near-term Ramsey Discount Rate		
	2.5%	2.0%	1.5%
	billion 2023$		
1	0.07	0.10	0.14
2	0.08	0.11	0.16
3	0.32	0.43	0.62
4	0.43	0.59	0.84
5	0.46	0.63	0.90

Table V.76 Present Value of Methane Emissions Reduction for CRE Shipped During the Period 2029–2058 (2021 Interim SC-GHG Estimates)

TSL	SC-CH_4 Case			
	Discount Rate and Statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	billion 2023$			
1	0.02	0.05	0.07	0.14
2	0.02	0.06	0.09	0.16
3	0.08	0.24	0.33	0.63
4	0.11	0.32	0.45	0.86
5	0.12	0.35	0.48	0.92

Table V.77 Present Value of Nitrous Oxide Emissions Reduction for CRE Shipped During the Period 2029–2058 (2023 SC-GHG Estimates)

TSL	SC-N_2O Case		
	Near-term Ramsey Discount Rate		
	2.5%	2.0%	1.5%
	billion 2023$		
1	0.002	0.002	0.004
2	0.002	0.003	0.005
3	0.01	0.01	0.02
4	0.01	0.01	0.02
5	0.01	0.02	0.03

Table V.78 Present Value of Nitrous Oxide Emissions Reduction for CRE Shipped During the Period 2029–2058 (2021 Interim SC-GHG Estimates)

TSL	SC-N_2O Case			
	Discount Rate and Statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	billion 2023$			
1	0.0002	0.001	0.001	0.002
2	0.000	0.001	0.001	0.002
3	0.001	0.003	0.00	0.01
4	0.001	0.004	0.01	0.01
5	0.001	0.004	0.01	0.01

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the global and U.S. economy continues to evolve rapidly. DOE, together with other Federal agencies, will continue to review methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. DOE notes, however, that the adopted standards would be economically justified even without inclusion of monetized benefits of reduced GHG emissions.

DOE also estimated the monetary value of the economic benefits associated with NO_X and SO_2 emissions reductions anticipated to result from the considered TSLs for CRE. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.79 presents the present value for NO_X emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates, and table V.80 presents similar results for SO_2 emissions reductions. The results in these tables reflect application of EPA's low dollar-per-ton values, which DOE used to be conservative. The time-series of annual values is presented for the selected TSL in chapter 14 of the final rule TSD.

Table V.79 Present Value of NO_X Emissions Reduction for CRE Shipped During the Period 2029–2058

TSL	3% Discount Rate	7% Discount Rate
	million 2023$	
1	398	155
2	460	179
3	1,785	695
4	2,414	939
5	2,582	1,004

Table V.80 Present Value of SO_2 Emissions Reduction for CRE Shipped During the Period 2029–2058

TSL	3% Discount Rate	7% Discount Rate
	million 2023$	
1	91	36
2	105	42
3	408	161
4	551	218
5	590	232

Not all the public health and environmental benefits from the reduction of GHG, NO_X, and SO_2 are captured in the values above, and additional unquantified benefits from the reductions of those pollutants as well as from the reduction of direct PM and other co-pollutants may be significant. DOE has not included monetary benefits of the reduction of Hg emissions because the amount of reduction is very small.

7. Other Factors

The Secretary, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII), 42 U.S.C. 6316(e)(1)) No other factors were considered in this analysis.

8. Summary of Economic Impacts

Table V.81 and table V.82 presents the NPV values that result from adding the estimates of the economic benefits resulting from reduced GHG and NO_X and SO_2 emissions to the NPV of consumer benefits calculated for each TSL considered in this rulemaking. The consumer benefits are domestic U.S. monetary savings that occur as a result of purchasing the covered equipment and are measured for the lifetime of equipment shipped during the period 2029–2058. The climate benefits associated with reduced GHG emissions resulting from the adopted standards are global benefits and are also calculated based on the lifetime of CRE shipped during the period 2029–2058.

Table V.81 Consumer NPV Combined with Present Value of Climate Benefits and Health Benefits (2023 SC-GHG Estimates)

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Using 3% discount rate for Consumer NPV and Health Benefits (billion 2023$)					
2.5% Near-term Ramsey DR	1.71	2.02	8.38	8.58	-1.28
2.0% Near-term Ramsey DR	2.12	2.50	10.2	11.1	1.39
1.5% Near-term Ramsey DR	2.89	3.39	13.7	15.7	6.38
Using 7% discount rate for Consumer NPV and Health Benefits (billion 2023$)					
2.5% Near-term Ramsey DR	1.04	1.22	4.93	5.11	-0.14
2.0% Near-term Ramsey DR	1.45	1.70	6.78	7.61	2.54
1.5% Near-term Ramsey DR	2.22	2.59	10.2	12.3	7.53

Table V.82 Consumer NPV Combined with Present Value of Climate Benefits and Health Benefits (2021 Interim SC-GHG Estimates)

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Using 3% discount rate for Consumer NPV and Health Benefits (billion 2023$)					
5% Average SC-GHG case	1.2	1.4	5.9	5.2	-4.9
3% Average SC-GHG case	1.3	1.6	6.7	6.4	-3.7
2.5% Average SC-GHG case	1.5	1.7	7.3	7.2	-2.8
3% 95th percentile SC-GHG case	1.8	2.2	8.9	9.3	-0.5
Using 7% discount rate for Consumer NPV and Health Benefits (billion 2023$)					
5% Average SC-GHG case	0.5	0.6	2.5	1.8	-3.7
3% Average SC-GHG case	0.7	0.8	3.3	2.9	-2.5
2.5% Average SC-GHG case	0.8	1.0	3.9	3.7	-1.7
3% 95th percentile SC-GHG case	1.2	1.4	5.5	5.8	0.6

C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered equipment must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i))) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(3)(B)(i))

For this final rule, DOE considered the impacts of new and amended standards for CRE at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (for example, between business owners and renters). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher-than-expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forgo the purchase of CRE in the standards case, this decreases sales for manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to equipment actually used by consumers in the standards case; if a standard decreases the number of equipment purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of CRE purchases in chapter 9 of the final rule TSD.

1. Benefits and Burdens of TSLs Considered for CRE Standards

Table V.83 and table V.84 summarize the quantitative impacts estimated for each TSL for CRE. The national impacts are measured over the lifetime of CRE purchased during the 30-year period that begins in the anticipated year of compliance with amended standards (2029–2058). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. DOE is presenting monetized benefits of GHG emissions reductions in accordance with the applicable Executive orders, and DOE would reach the same conclusion presented in this notice in the absence of the SC-GHG, including the 2023 SC-GHG. The efficiency levels contained in each TSL are described in section V.A of this document.

Table V.83 Summary of Analytical Results for CRE at all TSLs: National Impacts

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Cumulative FFC National Energy Savings					
FFC (Quads)	0.25	0.29	**1.11**	1.50	1.61
Cumulative FFC Emissions Reduction					
CO_2 (*million metric tons*)	4.39	5.09	**19.7**	26.7	28.6
CH_4 (*thousand tons*)	37.4	43.3	**168**	228	243
N_2O (*thousand tons*)	0.04	0.05	**0.19**	0.26	0.28
NO_x (*thousand tons*)	8.23	9.52	**36.9**	50.0	53.5
SO_2 (*thousand tons*)	1.34	1.55	**6.02**	8.14	8.71
Hg (*tons*)	0.01	0.01	**0.04**	0.06	0.06
Present Value of Benefits and Costs (*3% discount rate, billion 2023$*)					
Consumer Operating Cost Savings	0.84	1.02	**4.61**	6.90	7.40
Climate Benefits* (2023 SC-GHG)	1.03	1.19	**4.60**	6.23	6.66
Climate Benefits* (2021 interim SC-GHG estimates)	0.25	0.29	**1.12**	1.51	1.62
Health Benefits**	0.49	0.57	**2.19**	2.97	3.17
Total Benefits† (2023 SC-GHG estimates)	2.35	2.77	**11.4**	16.1	17.2
Total Benefits† (2021 interim SC-GHG estimates)	1.58	1.87	**7.92**	11.38	12.19
Consumer Incremental Equipment Costs‡	0.24	0.27	**1.18**	5.02	15.8
Consumer Net Benefits	0.60	0.74	**3.43**	1.89	-8.45
Net Benefits† (2023 SC-GHG estimates)	2.12	2.50	**10.2**	11.1	1.39
Net Benefits† (2021 interim SC-GHG estimates)	1.34	1.60	**6.74**	6.36	-3.66
Present Value of Benefits and Costs (*7% discount rate, billion 2023$*)					
Consumer Operating Cost Savings	0.36	0.44	**1.99**	2.97	3.19
Climate Benefits* (2023 SC-GHG estimates)	1.03	1.19	**4.60**	6.23	6.66
Climate Benefits* (2021 interim SC-GHG estimates)	0.25	0.29	**1.12**	1.51	1.62
Health Benefits**	0.19	0.22	**0.86**	1.16	1.24
Total Benefits† (2023 SC-GHG estimates)	1.58	1.85	**7.45**	10.4	11.1
Total Benefits† (2021 interim SC-GHG estimates)	0.80	0.95	**3.96**	5.64	6.04
Consumer Incremental Equipment Costs‡	0.13	0.15	**0.67**	2.75	8.55
Consumer Net Benefits	0.24	0.29	**1.32**	0.22	-5.36
Net Benefits† (2023 SC-GHG estimates)	1.45	1.70	**6.78**	7.61	2.54
Net Benefits† (2021 interim SC-GHG estimates)	0.68	0.80	**3.29**	2.89	-2.51

Note: This table presents the costs and benefits associated with CRE shipped during the period 2029−2058. These results include benefits to consumers which accrue after 2058 from the equipment shipped during the period 2029−2058. TSL 3 (highlighted) is the selected TSL.

* Climate benefits are calculated different estimates of the SC-CO2, SC-CH4 and SC-N2O. Climate benefits are estimated using two separate sets of estimates of the social cost for each greenhouse gas, an updated set published in 2023 by the Environmental Protection Agency (EPA) ("2023 SC-GHG") and the interim set of estimates used in the NOPR which were published in 2021 by the Interagency Working Group on the SC-GHG (IWG) ("2021 Interim SC-GHG") (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 2 percent near-term Ramsey discount rate are shown for the 2023 SC-GHG estimates, and the climate benefits associated with the average SC-GHG at a 3-percent discount rate are shown for the 2021 interim SC-GHG estimates.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for NO_X and SO_2) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. Table 5 of the EPA's *Estimating the Benefit per Ton of Reducing PM2.5 Precursors from 21 Sectors* TSD provides a summary of the health impact endpoints quantified in the analysis. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

† Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC-GHG with 2-percent near term Ramsey discount rate for the 2023 SC-GHG estimates and the average SC-GHG with 3-percent discount rate for the 2021 interim SC-GHG estimates.

‡ Costs include incremental equipment costs.

Table V.84 Summary of Analytical Results for CRE TSLs: Manufacturer and Consumer Impacts

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Manufacturer Impacts					
Industry NPV (*million 2023$*) (No-new-standards case INPV = 3,022.3)	2,997.6 to 3,001.5	2,994.8 to 2,999.2	2,943.6 to 2,971.0	2,862.2 to 2,958.8	2,800.6 to 3,077.5
Industry NPV *(% change)*	(0.8) to (0.7)	(0.9) to (0.8)	(2.6) to (1.7)	(5.3) to (2.1)	(7.3) to 1.8
Consumer Average LCC Savings (2023$)					
CB.SC.L	44.3	75.4	163.6	163.6	163.6
CB.SC.M	24.6	46.4	8.1	8.1	8.1
HCS.SC.L	24.1	24.1	24.1	24.1	24.1
HCS.SC.M	12.4	18.9	18.9	18.9	18.9
HCT.SC.I	26.7	29.3	29.3	29.3	(309.8)
HCT.SC.L	n/a	n/a	n/a	n/a	(430.4)
HCT.SC.M	n/a	n/a	n/a	n/a	(340.7)
HZO.RC.L	n/a	n/a	n/a	n/a	n/a
HZO.RC.M	n/a	n/a	n/a	n/a	n/a
HZO.SC.L	54.0	54.0	1,243.6	1,243.6	1,243.6
HZO.SC.M	39.2	39.2	312.9	312.9	312.9
SOC.RC.M	n/a	n/a	n/a	743.4	(181.4)
SOC.SC.M	441.5	481.5	443.5	183.2	183.2
SVO.RC.M	97.1	97.1	97.1	473.0	473.0
SVO.SC.M	430.2	576.1	578.9	642.4	642.4
VCS.SC.H	9.8	9.8	9.8	9.8	(57.7)
VCS.SC.I	45.1	70.8	488.2	488.2	488.2
VCS.SC.L	43.3	88.0	470.5	470.5	470.5
VCS.SC.M	29.1	29.1	29.1	(42.0)	(42.0)
VCT.RC.L	n/a	n/a	n/a	(182.9)	(3,080.4)
VCT.RC.M	n/a	n/a	n/a	(108.3)	(3,333.3)
VCT.SC.H	14.6	19.3	19.3	19.3	(1,467.3)
VCT.SC.I	n/a	n/a	n/a	n/a	(990.6)
VCT.SC.L	45.2	45.2	436.9	(809.8)	(809.8)
VCT.SC.M	28.0	28.0	33.2	(66.0)	(1,421.6)
VOP.RC.L	1,300.4	1,300.4	1,300.4	1,529.7	1,529.7
VOP.RC.M	337.4	337.4	337.4	798.0	798.0
VOP.SC.M	604.6	915.5	1,867.5	1,945.9	1,945.9
Shipment-Weighted Average*	42.8	49.8	115.8	8.3	(606.9)
Consumer Simple PBP (years)					
CB.SC.L	1.2	1.8	4.0	4.0	4.0
CB.SC.M	1.9	2.8	6.8	6.8	6.8
HCS.SC.L	3.2	3.2	3.2	3.2	3.2
HCS.SC.M	3.9	4.0	4.0	4.0	4.0
HCT.SC.I	7.1	7.0	7.0	7.0	20.5
HCT.SC.L	n/a	n/a	n/a	n/a	52.6
HCT.SC.M	n/a	n/a	n/a	n/a	114.9
HZO.RC.L	n/a	n/a	n/a	n/a	n/a
HZO.RC.M	n/a	n/a	n/a	n/a	n/a
HZO.SC.L	1.8	1.8	2.4	2.4	2.4

HZO.SC.M	2.3	2.3	2.6	2.6	2.6
SOC.RC.M	n/a	n/a	n/a	4.8	18.3
SOC.SC.M	0.5	0.7	2.4	7.0	7.0
SVO.RC.M	2.4	2.4	2.4	3.5	3.5
SVO.SC.M	0.9	1.0	4.1	4.4	4.4
VCS.SC.H	4.0	4.0	4.0	4.0	9.8
VCS.SC.I	1.2	1.8	3.1	3.1	3.1
VCS.SC.L	1.2	1.8	2.2	2.2	2.2
VCS.SC.M	3.0	3.0	3.0	9.6	9.6
VCT.RC.L	n/a	n/a	n/a	16.8	57.3
VCT.RC.M	n/a	n/a	n/a	19.8	107.3
VCT.SC.H	2.7	4.0	4.0	4.0	69.2
VCT.SC.I	n/a	n/a	n/a	n/a	39.0
VCT.SC.L	2.2	2.2	3.5	16.9	16.9
VCT.SC.M	3.1	3.1	6.5	11.6	55.6
VOP.RC.L	0.9	0.9	0.9	1.6	1.6
VOP.RC.M	1.8	1.8	1.8	2.7	2.7
VOP.SC.M	0.7	0.9	1.4	1.8	1.8
Shipment-Weighted Average*	2.4	2.5	3.5	9.5	27.9
Percent of Consumers that Experience a Net Cost					
CB.SC.L	0%	0%	9%	9%	9%
CB.SC.M	0%	1%	26%	26%	26%
HCS.SC.L	4%	4%	4%	4%	4%
HCS.SC.M	3%	9%	9%	9%	9%
HCT.SC.I	10%	10%	10%	10%	59%
HCT.SC.L	n/a	n/a	n/a	n/a	61%
HCT.SC.M	n/a	n/a	n/a	n/a	86%
HZO.RC.L	n/a	n/a	n/a	n/a	n/a
HZO.RC.M	n/a	n/a	n/a	n/a	n/a
HZO.SC.L	0%	0%	0%	0%	0%
HZO.SC.M	0%	0%	1%	1%	1%
SOC.RC.M	n/a	n/a	n/a	16%	37%
SOC.SC.M	0%	0%	4%	23%	23%
SVO.RC.M	26%	26%	26%	15%	15%
SVO.SC.M	0%	0%	12%	10%	10%
VCS.SC.H	6%	6%	6%	6%	59%
VCS.SC.I	0%	0%	4%	4%	4%
VCS.SC.L	0%	0%	0%	0%	0%
VCS.SC.M	3%	3%	3%	52%	52%
VCT.RC.L	n/a	n/a	n/a	70%	86%
VCT.RC.M	n/a	n/a	n/a	32%	56%
VCT.SC.H	1%	7%	7%	7%	73%
VCT.SC.I	n/a	n/a	n/a	n/a	48%
VCT.SC.L	0%	0%	7%	83%	83%
VCT.SC.M	3%	3%	25%	45%	61%
VOP.RC.L	0%	0%	0%	3%	3%
VOP.RC.M	4%	4%	4%	7%	7%
VOP.SC.M	0%	0%	0%	0%	0%
Shipment-Weighted Average*	2%	3%	9%	40%	48%

Parentheses indicate negative (-) values. The entry "n/a" means not applicable because there is no change in the standard at certain TSLs.

* Weighted by shares of each equipment class in total projected shipments in 2029.

This section discusses DOE's conclusions regarding CRE connected to a remote condensing unit and non-large CRE connected to a self-contained unit. As discussed previously in sections I and II.B.3 of this document, DOE is

continuing to analyze the large-capacity ranges presented in table IV. for the VOP.SC.M, SVO.SC.M, HZO.SC.L, SOC.SC.M, VCT.SC.M, VCT.SC.L, and VCS.SC.L equipment classes.

DOE first considered TSL 5, which represents the max-tech efficiency levels for all equipment classes. The design options DOE analyzed at this level include the max-tech technologies for all equipment classes. DOE expects manufacturers would likely need to incorporate occupancy sensors with dimming capability for all vertical and semi-vertical open and all transparent door equipment classes. Vertical and semi-vertical open equipment classes would also likely necessitate the use of night curtains. For equipment classes with transparent doors, DOE expects manufacturers would likely need to incorporate vacuum-insulated glass doors. For most self-contained equipment, DOE expects manufacturers would likely need to incorporate variable-speed compressors. For all self-contained equipment classes, DOE expects manufacturers would likely incorporate EC evaporator and condenser fan motors.

TSL 5 would save an estimated 1.61 quads of FFC energy over 30 years of shipments (2029 to 2058), an amount DOE considers significant. Under TSL 5, the NPV of consumer benefits would be −$5.36 billion using a discount rate of 7 percent, and −$8.45 billion using a discount rate of 3 percent for the same 30-year period.

The cumulative emissions reductions at TSL 5 are 28.6 Mt of CO_2, 8.71 thousand tons of SO_2, 53.5 thousand tons of NO_X, 0.06 tons of Hg, 243 thousand tons of CH_4, and 0.28 thousand tons of N_2O for the same 30-year period. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average 2023 SC-GHG estimates at a 2-percent, near-term Ramsey discount rate) at TSL 5 is $6.66 billion, and the climate benefits associated with the average 2021 Interim SC-GHG estimates at a 3-percent discount rate are estimated to be $1.62 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 5 is $1.24 billion using a 7-percent discount rate and $3.17 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and either the 2-percent near-term Ramsey discount rate case for climate benefits from reduced GHG emissions, or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 5 is $2.54 billion (using the 2023 SC-GHG estimates) or −$2.51 billion (using the 2021 interim SC-GHG estimates). Using a 3-percent discount rate for consumer benefits and costs and health benefits from reduced NOx and SO_2 emissions, and either the 2-percent discount rate case for climate benefits from reduced GHG emissions or 3-percent discount rate case for, the estimated total NPV at TSL 5 is $1.39 billion (using the 2023 SC-GHG estimates) or −$3.66 billion (using the 2021 interim SC-GHG estimates). The estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 5, affected purchasers of CRE experience average LCC savings ranging from −$3,333 to $1,946 with a payback period ranging from 1.6 years to 114.9 years. The LCC savings are negative for 12 of the 28 analyzed equipment classes, representing 78 percent of annual shipments. For example, the equipment class with the highest annual shipments volume (VCS.SC.M), representing approximately 36 percent of annual CRE shipments, has negative LCC savings of −$42 with 52 percent of consumers experiencing a net cost, and a PBP of 9.6 years. The second-highest equipment class in terms of annual units shipped (VCT.SC.M), representing about 25 percent of annual CRE shipments, has negative LCC savings of −$1,422 with 61 percent of consumers experiencing a net cost, and a PBP of 55.6 years. Overall, almost half of CRE purchasers (48 percent) experience a net cost. Furthermore, the shipment-weighted-average PBP is estimated at 27.8 years, which is generally higher than the average CRE lifetime, while the shipment-weighted-average LCC savings is negative, at −$608.

At TSL 5, the projected change in INPV ranges from a decrease of $221.7 million to an increase of $55.2 million, which corresponds to a decrease of 7.3 percent and an increase of 1.8 percent, respectively. DOE estimates that manufacturers would need to invest $254.1 million to update equipment designs and source, qualify, and test high-efficiency components across their entire CRE portfolio. DOE estimates that approximately 55 percent of analyzed equipment class model listings in its CCD (10,957 unique basic models out of a total of 19,902) do not meet the max-tech efficiency levels required.

At this level, although most design options would not necessitate purchasing new equipment or significant capital investment, nearly all manufacturers would need to spend notable development time incorporating the analyzed max-tech design options across their entire CRE portfolio. For the 84 manufacturers that offer CRE with transparent doors (which account for approximately 41 percent of model listings), implementing vacuum-insulated glass would require significant engineering resources and testing time to ensure adequate safety and durability of their equipment in all commercial settings. In interviews, most manufacturers raised concerns about standards requiring a widespread adoption of vacuum-insulated glass as it is still a relatively new technology in the commercial refrigeration market. Manufacturers pointed to the very limited industry experience with implementing vacuum-insulated glass in CRE applications. In addition to incorporating vacuum-insulated glass into transparent door CRE designs, DOE expects most manufacturers would have to invest in extensive redesign and development to incorporate variable-speed compressors across nearly all self-contained CRE models.

Based on this analysis, the Secretary concludes that at TSL 5 for CRE, the benefits of energy savings, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the negative NPV of consumer benefits, economic burden on many CRE purchasers, and the impacts on manufacturers, including the conversion costs impacts that could result in a reduction in INPV. For the manufacturers of CRE with transparent doors implementing vacuum-insulated glass would require significant engineering resources and testing time to ensure adequate safety and durability of their equipment in all commercial settings. Almost half of CRE purchasers (48 percent) experience a net cost. Furthermore, the shipment-weighted average LCC savings are negative (−$608) and the shipment-weighted average PBP exceeds the average CRE lifetime, at 27.8 years. Consequently, the Secretary has concluded that TSL 5 is not economically justified.

DOE then considered TSL 4, an intermediate TSL representing less stringent efficiency levels for approximately one-third of the equipment classes analyzed compared to TSL 5. DOE expects manufacturers would likely need to incorporate occupancy sensors with dimming capability for all vertical and semi-vertical open and most transparent door equipment classes. Vertical and semi-vertical open equipment classes would also likely necessitate the use of night

curtains. For most equipment classes with transparent doors, DOE expects manufacturers would incorporate triple-pane, argon-filled glass doors, triple-pane, krypton-filled glass doors, or vacuum-insulated glass doors. For most self-contained equipment classes, DOE expects manufacturers would likely need to incorporate variable-speed compressors. For all self-contained equipment classes, DOE expects manufacturers would likely incorporate EC evaporator and condenser fan motors.

TSL 4 would save an estimated 1.50 quads of full fuel cycle energy over 30 years of shipments (2029 to 2058), an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $0.22 billion using a discount rate of 7 percent, and $1.89 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 26.7 Mt of CO_2, 8.14 thousand tons of SO_2, 50 thousand tons of NO_X, 0.06 tons of Hg, 228 thousand tons of CH_4, and 0.26 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions at TSL 4 is $6.23 billion (using the 2023 SC–GHG estimates at a 2-percent near-term Ramsey discount rate) or $1.51 billion (using 2021 interim SC–GHG estimates at an average 3-percent discount rate). The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 4 is $1.16 billion using a 7-percent discount rate and $2.97 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and either the 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 4 is $7.61 billion (using the 2023 SC–GHG estimates) or $2.89 billion (using the 2021 interim SC–GHG estimates). Using a 3-percent discount rate for consumer benefits and costs and health benefits from reduced NO_X and SO_2 emissions, and the 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 4 is $11.08 billion (using the 2023 SC–GHG estimates) or $6.36 billion (using the 2021 interim SC–GHG estimates). The estimated total NPV is provided for additional information, however, DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 4, affected purchasers for each CRE equipment class experience average LCC savings ranging from −$810 to $1,946 with a payback period ranging from 1.6 years to 19.8 years. The LCC savings are negative for 5 of the 28 analyzed equipment classes, representing 75 percent of annual shipments. For example, the equipment class with the highest annual shipments volume (VCS.SC.M), representing approximately 36 percent of annual CRE shipments, has negative LCC savings of −$42 with 52 percent of consumers experiencing a net cost, and a PBP of 9.6 years. The second-highest equipment class in terms of annual units shipped (VCT.SC.M), representing about 25 percent of annual CRE shipments, has negative LCC savings of −$66 with 45 percent of consumers experiencing a net cost, and a PBP of 11.6 years. Overall, approximately 40 percent of affected CRE purchasers would experience a net cost, while 27 percent would experience a net benefit, and the remaining purchasers would be unaffected at TSL 4. In addition, the estimated shipment-weighted average LCC savings for all CRE is $8 and the shipment-weighted average PBP is 9.5 years.

At TSL 4, the projected change in INPV ranges from a decrease of $160.1 million to a decrease of $63.5 million, which correspond to decreases of 5.3 percent and 2.1 percent, respectively. DOE estimates that industry would need to invest $223.9 million to comply with standards set at TSL 4. Similar to TSL 5, DOE estimates that over half of CRE models would require redesign to meet standards set at TSL 4. Specifically, DOE estimates that approximately 53 percent of analyzed equipment class model listings in its CCD (10,574 unique basic models out of a total of 19,902) do not meet the TSL 4 efficiency levels.

Similar to TSL 5, DOE expects manufacturers would need to dedicate notable engineering resources and time to update equipment designs and source, qualify, and test high-efficiency components. DOE also expects some manufacturers would need to invest in new tooling to accommodate the additional door thickness associated with incorporating additional panes of glass into CRE designs. At this level, DOE expects 7 out of the 11 directly analyzed transparent door equipment classes would likely necessitate vacuum-insulated glass doors or other improved door designs. Specifically, DOE expects SOC.SC.M and VCT.SC.L (which represent approximately 9 percent of transparent door CRE model listings) would incorporate vacuum-insulated glass doors, SOC.RC.M, VCT.RC.L, and VCT.RC.M (which represent approximately 63 percent of transparent door CRE model listings) would incorporate triple-pane glass doors with krypton fill, and HCT.SC.I and VCT.SC.M (which represent approximately 25 percent of transparent door CRE model listings) would incorporate triple-pane glass doors with argon fill at this level. As previously discussed, many manufacturers raised concerns about the widespread adoption of vacuum-insulated glass because the industry does not have widescale experience integrating this technology into their designs. In interviews and public comments, some manufacturers also raised concerns about the limited supply of krypton gas available to the market. (Hillphoenix, No. 77 at p. 6; Zero Zone, No. 75 at pp. 3–4) Currently, few CRE designs have triple-pane glass doors with krypton fill as nearly all CRE with double-pane or triple-pane doors are manufactured with argon fill, and single-pane doors do not have an inert gas fill. At this level, DOE expects most self-contained equipment classes (representing approximately 90 percent of self-contained CRE model listings) would likely necessitate the use of variable-speed compressors. Therefore, DOE expects most manufacturers would still have to invest in significant redesign and development time to optimize variable-speed compressors to ensure energy efficiency benefits across the majority of self-contained CRE designs.

Most CRE manufacturers offer an exhaustive range of model offerings to appeal to the unique requirements of each CRE consumer. Within a model family, manufacturers offer numerous options to customize CRE to the specifications of restaurant, supermarket, and retail chains and other bulk purchasers of CRE (*e.g.,* Coca-Cola, Pepsi). In interviews, many manufacturers noted that offering a wide-range of models with a high-level of customization and optionality (*e.g.,* different evaporator setups, different lighting arrangements, different door configurations, *etc.*) is critical to succeed in the CRE market. Many manufacturers prioritize offering a breadth of model offerings and specialty CRE, even if sales of each individual model are low. As such, manufacturers still offer hundreds of basic models for equipment classes with low annual shipments. For example, SOC.RC.M accounts for approximately 5 percent of model listings (over 1,000 unique basic models certified in DOE's CCD) even though SOC.RC.M only accounts for 0.1 percent of industry shipments (less than 2,000 units sold in 2024).

Multiple stakeholders raised concerns about the risk that stringent standards and limited laboratory and engineering resources would force manufacturers to discontinue certain equipment designs and prioritize redesigning high-volume model offerings. (Continental, No. 107 at p. 3; Continental, No. 86 at p. 6; NAFEM, No. 87 at p. 2; Structural Concepts, No. 74 at p. 4) Some manufacturers expressed concern that the discontinuation of model offerings could lead to equipment commoditization where equipment can only compete on price rather than value-added options and features. In addition to the impacts that extensive redesign and testing may have on CRE manufacturers overall, it would also disproportionately impact small businesses, which typically have limited personnel, engineering, and laboratory resources relative to larger CRE manufacturers and account for approximately 20 percent of CRE manufacturers (20 out of 103 OEMs).

Based on this analysis, the Secretary concludes that at TSL 4 for CRE, the benefits of energy savings, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on a large fraction of CRE purchasers, the risk of reduced customization and optionality if manufacturers have insufficient resources to redesign their full portfolio of models within the compliance period, the impacts on manufacturers including small businesses, including the conversion costs that could result in a reduction in INPV, and limited industry experience with vacuum-insulated glass doors in commercial applications. If manufacturers do not have sufficient resources to redesign models within the compliance period, manufacturers would likely discontinue low-volume equipment designs and prioritize redesigning high-volume model offerings, potentially leading to equipment commoditization. Finally, although the shipments-weighted average LCC savings for all CRE are marginally positive (at $8), overall the LCC savings are negative for five equipment classes representing 75 percent of annual shipments. Consequently, the Secretary has concluded that TSL 4 is not economically justified.

DOE then considered TSL 3, an intermediate TSL representing less stringent efficiency levels for 12 equipment classes compared to TSL 4. In contrast to TSL 4 and TSL 5, DOE expects that manufacturers could meet TSL 3 efficiencies without incorporating occupancy sensors with dimming capability into vertical and semi-vertical open and transparent door CRE designs, and without use of vacuum-insulated-glass or triple-pane glass with krypton fill into transparent door CRE designs. For vertical and semi-vertical open equipment classes, DOE expects manufacturers would likely require the use of night curtains. For some equipment classes with transparent doors, DOE expects manufacturers would incorporate triple-pane, argon-filled glass doors. For all self-contained equipment classes, DOE expects manufacturers would incorporate EC evaporator and condenser fan motors. For most self-contained equipment classes, DOE expects manufacturers would likely need to incorporate variable-speed compressors. DOE also expects that, given the reduced number of models requiring redesign at this TSL and the lower overall cost to implement this level compared with TSL 4, manufacturers would be able to continue to offer numerous options to customize CRE to the specifications of restaurant, supermarket, and retail chains and other bulk purchasers of CRE (*e.g.,* Coca-Cola, Pepsi) and offer a wide-range of models with a high-level of customization and optionality (*e.g.,* different evaporator setups, different lighting arrangements, different door configurations, *etc.*) which is critical to succeed in the CRE market.

TSL 3 would save an estimated 1.11 quads of full fuel cycle energy over 30 years of shipments (2029 to 2058), an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $1.32 billion using a discount rate of 7 percent, and $3.43 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 19.7 Mt of CO_2, 6.02 thousand tons of SO_2, 36.9 thousand tons of NO_X, 0.04 tons of Hg, 168 thousand tons of CH_4, and 0.19 thousand tons of N_2O. At TSL 3, the estimated monetary value of the climate benefits from reduced GHG emissions is $4.6 billion (using the SC–GHG estimates at a 2-percent near term Ramsey discount rate) or $1.12 billion (using the 2021 interim SC–GHG estimates at an average 3-percent discount rate) . The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 3 is $0.86 billion using a 7-percent discount rate and $2.19 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and either the 2-percent near term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 3 is $6.78 billion (using the 2023 SC–GHG estimates) or $3.29 billion (using the 2021 interim SC–GHG estimates). Using a 3-percent discount rate for consumer benefits and costs and health benefits from reduced NO_X and SO_2 emissions, and either the 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 3 is $10.2 billion (using the 2023 SC–GHG estimates) or $6.74 billion (using the 2021 interim SC–GHG estimates). The estimated total NPV is provided for additional information, however, DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 3, affected purchasers for each CRE equipment class experience an average LCC savings ranging from $8 to $1,868 with a payback period ranging from 0.9 years to 7.0 years. For example, for equipment classes VCS.SC.M, VCT.SC.M, VCS.SC.L, and VCT.SC.L, which account for 77 percent of annual CRE shipments, there is a net LCC savings of $29, $33, $471, and $437 and a PBP of 3.0, 6.5, 2.2, and 3.5 years, respectively. Overall, approximately 91 percent of affected CRE purchasers would experience a net benefit or not be affected at TSL 3. Furthermore, the estimated shipment-weighted-average LCC savings is $116 and PBP is 3.5 years, which is lower than the average CRE lifetime.

At TSL 3, the projected change in INPV ranges from a decrease of $78.7 million to a decrease of $51.3 million, which correspond to decreases of 2.6 percent and 1.7 percent, respectively. DOE estimates that industry must invest $117.7 million to comply with standards set at TSL 3. At this level, notably fewer models would require redesign compared to TSL 4 and TSL 5. DOE estimates that approximately 37 percent of analyzed equipment class model listings in its CCD (7,306 unique basic models out of a total of 19,902) do not meet the TSL 3 efficiency levels required.

Similar to TSL 4 and TSL 5, DOE expects manufacturers would spend development time updating equipment designs to incorporate high-efficiency components. However, DOE expects manufacturers could meet TSL 3 without implementing triple-pane doors with krypton fill or vacuum-insulated glass doors, alleviating industry concerns about the availability and supply of krypton gas and vacuum-

insulated glass. Additionally, DOE expects fewer equipment classes would necessitate the use of variable-speed compressors. At TSL 3, approximately 63 percent of self-contained CRE model listings may need to incorporate variable-speed compressors, significantly less than at TSL 4 where DOE expects 90 percent of self-contained CRE model listings would necessitate the use of variable-speed compressors. Since the majority of basic models (63 percent of model listings) already meet TSL 3 efficiencies, the estimated industry investment and strain on manufacturers' testing facilities and engineering resources would be less at TSL 3 than at TSL 4 and TSL 5, reducing the risk that manufacturers would need to prioritize resources and discontinue low-volume CRE designs.

After considering the analysis and weighing the benefits and burdens, the Secretary has concluded that a standard set at TSL 3 for CRE would be economically justified. At this TSL, the average LCC savings for all affected purchasers are positive. An estimated 42 percent of purchasers experience a net benefit, while 9 percent of purchasers experience a net LCC cost. The FFC national energy savings are significant and the NPV of consumer benefits is positive using both a 3-percent and 7-percent discount rate. Notably, the benefits to consumers vastly outweigh the cost to manufacturers. At TSL 3, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent is over 16 times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at TSL 3 are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $4.6 billion in climate benefits (associated with the average SC–GHG at a 2-percent near-term Ramsey discount rate), and $2.19 billion (using a 3-percent discount rate) or $0.86 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

As stated, DOE conducts the walk-down analysis to determine the TSL that represents the maximum improvement in energy efficiency that is technologically feasible and economically justified as required under EPCA. The walk-down is not a comparative analysis, as a comparative analysis would result in the maximization of net benefits instead of energy savings that are technologically feasible and economically justified, which would be contrary to the statute. 86 FR 70892, 70908. Although DOE has not conducted a comparative analysis to select the amended energy conservation standards, DOE notes that as compared to TSL 5 and TSL 4, TSL 3 has a lower maximum decrease in INPV and lower manufacturer conversion costs. Furthermore, DOE notes that notably more basic models meet TSL 3 compared TSL 4 and TSL 5, reducing the amount of time and investment associated with redesigning and testing CRE models.

Finally, compared to TSL 5 and TSL 4, TSL 3 results in the highest consumer NPV and positive LCC savings for all CRE equipment classes, while PBPs for each equipment class are considerably less than the average CRE lifetime. In addition, DOE has determined that a 4-year compliance period to redesign CRE to meet the adopted standards will help alleviate manufacturers' concerns about engineering and laboratory resource constraints. Furthermore, the longer compliance period will help mitigate cumulative regulatory burden by allowing manufacturers more flexibility to spread investments across 4 years instead of 3 years. Manufacturers will also have more time to recoup any investments made to redesign CRE to comply with the October 2023 EPA Final Rule as compared to a 3-year compliance period.

Therefore, based on the previous considerations, DOE adopts the energy conservation standards for CRE at TSL 3. The new and amended energy conservation standards for CRE, which are expressed as kWh/day, are shown in table V.85.

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Table V.85 New and Amended Energy Conservation Standards for CRE

Equipment Class	Capacity Range	Maximum Daily Energy Consumption *kWh/day*
VOP.RC.H	All TDAs are applicable	0.551 × TDA + 3.506
VOP.RC.M	All TDAs are applicable	0.591 × TDA + 3.758
VOP.RC.L	All TDAs are applicable	2.079 × TDA + 6.472
VOP.RC.I	All TDAs are applicable	2.637 × TDA + 8.222
SVO.RC.H	All TDAs are applicable	0.572 × TDA + 2.756
SVO.RC.M	All TDAs are applicable	0.611 × TDA + 2.944
SVO.RC.L	All TDAs are applicable	2.079 × TDA + 6.473
SVO.RC.I	All TDAs are applicable	2.637 × TDA + 8.222
HZO.RC.H	All TDAs are applicable	0.350 × TDA + 2.880
HZO.RC.M	All TDAs are applicable	0.350 × TDA + 2.880
HZO.RC.L	All TDAs are applicable	0.550 × TDA + 6.880
HZO.RC.I	All TDAs are applicable	0.700 × TDA + 8.740
VCT.RC.H	All TDAs are applicable	0.150 × TDA + 1.950
VCT.RC.M	All TDAs are applicable	0.150 × TDA + 1.950
VCT.RC.L	All TDAs are applicable	0.490 × TDA + 2.610
VCT.RC.I	All TDAs are applicable	0.580 × TDA + 3.050
HCT.RC.M	All TDAs are applicable	0.160 × TDA + 0.130
HCT.RC.L	All TDAs are applicable	0.340 × TDA + 0.260
HCT.RC.I	All TDAs are applicable	0.356 × TDA + 0.276
VCS.RC.H	All volumes are applicable	0.100 × V + 0.260
VCS.RC.M	All volumes are applicable	0.100 × V + 0.260
VCS.RC.L	All volumes are applicable	0.210 × V + 0.540
VCS.RC.I	All volumes are applicable	0.250 × V + 0.630
HCS.RC.M	All volumes are applicable	0.100 × V + 0.260
HCS.RC.L	All volumes are applicable	0.210 × V + 0.540
HCS.RC.I	All volumes are applicable	0.250 × V + 0.630
SOC.RC.H	All TDAs are applicable	0.440 × TDA + 0.110
SOC.RC.M	All TDAs are applicable	0.440 × TDA + 0.110
SOC.RC.L	All TDAs are applicable	0.930 × TDA + 0.220
SOC.RC.I	All TDAs are applicable	0.970 × TDA + 0.231
CB.RC.M	All volumes are applicable	0.050 × V + 0.686
CB.RC.L	All volumes are applicable	0.194 × V + 1.693
VOP.SC.H	All TDAs are applicable	0.890 × TDA + 2.480[1]
VOP.SC.M – Non-Large	TDA ≤ 17	1.230 × TDA + 3.428
VOP.SC.M – Large***	TDA > 17	1.690 × TDA + 4.710
VOP.SC.L	All TDAs are applicable	3.092 × TDA + 8.598
VOP.SC.I	All TDAs are applicable	3.928 × TDA + 10.926
SVO.SC.H	All volumes are applicable	1.045 × TDA + 2.822
SVO.SC.M – Non-Large	TDA ≤ 15	1.207 × TDA + 3.258
SVO.SC.M – Large***	TDA > 15	1.700 × TDA + 4.590
SVO.SC.L	All TDAs are applicable	3.024 × TDA + 8.169

SVO.SC.I	All TDAs are applicable	3.840 × TDA + 10.384
HZO.SC.H	All TDAs are applicable	0.546 × TDA + 4.211
HZO.SC.M	All TDAs are applicable	0.532 × TDA + 4.100
HZO.SC.L – Non-Large	TDA ≤ 35	1.490 × TDA + 5.554
HZO.SC.L – Large***	TDA > 35	1.900 × TDA + 7.080
HZO.SC.I	All TDAs are applicable	1.900 × TDA + 7.065
VCT.SC.H	All volumes are applicable	0.047 × V + 0.493
VCT.SC.M – Non-Large	V ≤ 100	0.073 × V + 0.630
VCT.SC.M with Feature**	V ≤ 100	0.078 × V + 0.674
VCT.SC.M – Large***	V > 100	0.100 × V + 0.860
VCT.SC.L – Non-Large	V ≤ 70	0.233 × V + 2.374
VCT.SC.L with Feature**	V ≤ 70	0.249 × V + 2.540
VCT.SC.L – Large***	V > 70	0.290 × V + 2.950
VCT.SC.I	All TDAs are applicable	0.620 × TDA + 3.290
HCT.SC.M	All volumes are applicable	0.060 × V + 0.370
HCT.SC.L	All volumes are applicable	0.080 × V + 1.230
HCT.SC.I	All TDAs are applicable	0.498 × TDA + 0.383
VCS.SC.H	All volumes are applicable	0.021 × V + 0.793
VCS.SC.M	All volumes are applicable	0.038 × V + 1.039
VCS.SC.M with Feature**	All volumes are applicable	0.041 × V + 1.112
VCS.SC.L – Non-Large	V ≤ 100	0.169 × V + 1.050
VCS.SC.L with Feature**	V ≤ 100	0.181 × V + 1.133
VCS.SC.L – Large***	V > 100	0.220 × V + 1.380
VCS.SC.I	All volumes are applicable	0.264 × V + 0.683
HCS.SC.M	All volumes are applicable	0.037 × V + 0.675
HCS.SC.L	All volumes are applicable	0.055 × V + 1.033
HCS.SC.L with Feature**	All TDAs are applicable	0.059 × V + 1.105
HCS.SC.I	All volumes are applicable	0.313 × V + 0.811
SOC.SC.H	All TDAs are applicable	0.304 × TDA + 0.584
SOC.SC.M – Non-Large	TDA ≤ 40	0.356 × TDA + 0.685
SOC.SC.M – Large***	TDA > 40	0.520 × TDA + 1.000
SOC.SC.L	All TDAs are applicable	1.100 × TDA + 2.100
SOC.SC.I	All TDAs are applicable	1.530 × TDA + 0.360
CB.SC.M	All volumes are applicable	0.081 × V + 1.117
CB.SC.L	All volumes are applicable	0.297 × V + 2.591
PD.SC.M	All volumes are applicable	0.110 × V + 0.810

The equipment classes are separated by equipment family, condensing unit configuration, and operating temperature.

Equipment Families: VOP – Vertical Open; SVO – Semi-Vertical Open; HZO – Horizontal Open; VCT – Vertical Closed Transparent; HCT – Horizontal Closed Transparent; VCS – Vertical Closed Solid; HCS – Horizontal Closed Solid; SOC – Service Over Counter; CB – Chef Base or Griddle Stand; PD – Pull Down.

Condensing Unit Configurations: RC – Remote Condensing; SC – Self-Contained.

Operating Temperatures: H – High Temperature; M – Medium Temperature; L – Low Temperature; I – Ice Cream Temperature.

* V is the representative value of volume and TDA is the representative value of total display area as determined in accordance with the DOE test procedure at appendix B to subpart C of part 431and applicable sampling plans.

** For equipment classes designated "with Feature," refer to table I.2 for the list of qualifying features applicable to each class.

*** As discussed in section II.B.3 of this document, DOE is continuing to analyze the large-capacity ranges presented in table IV.6 for the VOP.SC.M, SVO.SC.M, HZO.SC.L, SOC.SC.M, VCT.SC.M, VCT.SC.L, and VCS.SC.L equipment classes.

Table V.86 Applicable Features for Equipment Classes with Feature for Maximum Daily Energy Consumption Standards for Commercial Refrigerators, Freezers, and Refrigerator-Freezers

Equipment Class	Applicable Feature(s)
VCT.SC.M (≤ 100)	Pass-through doors Sliding doors Both pass-through and sliding doors Roll-in doors Roll-through doors
VCT.SC.L (≤ 70)	Pass-through doors
VCS.SC.M	Pass-through doors Roll-in doors Roll-through doors Drawer units
VCS.SC.L (≤ 100)	Pass-through doors Roll-in doors Roll-through doors Drawer units
HCS.SC.L	Forced air evaporator

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2. Annualized Benefits and Costs of the Adopted Standards

The benefits and costs of the adopted standards can also be expressed in terms of annualized values. The annualized net benefit is: (1) the annualized national economic value (expressed in 2023$) of the benefits from operating equipment that meet the adopted standards (consisting primarily of operating cost savings from using less energy), minus increases in equipment purchase costs; and (2) the annualized monetary value of the climate and health benefits.

Table V.87 shows the annualized values for CRE under TSL 3, expressed in million 2023$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and NOx and SO_2 reduction health benefits, and a 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions,, the estimated cost of the adopted standards for CRE is $71 million per year in increased equipment installed costs, while the estimated annual benefits are $210 million from reduced equipment operating costs, $222 million in climate benefits (using the 2023 SC–GHG estimates) or $64 million in climate benefits (using the 2021 interim SC–GHG estimates), and $90 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $452 million per year (using the 2023 SC–GHG estimates) or $294 million per year (using the 2021 interim SC–GHG estimates).

Using a 3-percent discount rate for consumer benefits and costs and health benefits from reduced NOx and SO_2 emissions, and either the 2-percent near-term Ramsey discount rate case or the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards is $68 million per year in increased equipment costs, while the estimated annual benefits are $265 million in reduced operating costs, $222 million in climate benefits (using the 2023 SC–GHG estimates) or $64 million in climate benefits (using the 2021 interim SC–GHG estimates), and $126 million in health benefits. In this case, the net benefit would amount to $545 million per year (using the 2023 SC–GHG estimates) or $387 million per year (using the 2021 interim SC–GHG estimates).

[1] The equation for VOP.SC.H was written incorrectly in the August 2024 NODA Support Document and has been corrected here which is consistent with the secondary mapping in Table 4.1 of the August 2024 NODA.

Table V.87 Annualized Benefits and Costs of the Adopted Energy Conservation Standards for CRE at TSL 3 Shipped During the Period 2029–2058

	Million 2023$/year		
	Primary Estimate	Low-Net-Benefits Estimate	High-Net-Benefits Estimate
3% discount rate			
Consumer Operating Cost Savings	265	254	278
Climate Benefits* (2023 SC-GHG estimates)	222	221	228
Climate Benefits* (2021 interim SC-GHG estimates)	64.2	63.8	65.8
Health Benefits**	126	125	129
Total Benefits† (2023 SC-GHG estimates)	613	600	634
Total Benefits† (2021 interim SC-GHG estimates)	455	443	472
Consumer Incremental Equipment Costs‡	68	108	69
Net Benefits (2023 SC-GHG estimates)	545	492	565
Net Benefits (2021 interim SC-GHG estimates)	387	335	403
Change in Producer Cash Flow (INPV)‡‡	(8) – (5)	(8) – (5)	(8) – (5)
7% discount rate			
Consumer Operating Cost Savings	210	202	220
Climate Benefits* (2023 SC-GHG estimates)	222	221	228
Climate Benefits* (2021 interim SC-GHG estimates)	64.2	63.8	65.8
Health Benefits**	90	90	92
Total Benefits† (2023 SC-GHG estimates)	523	513	540
Total Benefits† (2021 interim SC-GHG estimates)	365	356	378
Consumer Incremental Equipment Costs‡	71	107	72
Net Benefits (2023 SC-GHG estimates)	452	406	468
Net Benefits (2021 interim SC-GHG estimates)	294	250	306
Change in Producer Cash Flow (INPV)‡‡	(8) – (5)	(8) – (5)	(8) – (5)

Note: These results include consumer, climate, and health benefits that accrue after 2058 from the equipment shipped during the period 2029–2058. The Primary, Low-Net-Benefits, and High-Net-Benefits Estimates utilize projections of energy prices from the *AEO2023* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a price decline rate (applicable to LED lighting and electronics in variable speed compressors) in the Primary and High-Net-Benefits Estimates, and no price-decline for the Low-Net-Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using different estimates of the global SC-GHG (see section IV.L of this document). Climate benefits are estimated using two separate sets of estimates of the social cost for each greenhouse gas, an updated set published in 2023 by the Environmental Protection Agency (EPA) ("2023 SC-GHG") and the interim set of estimates used in the NOPR which were published in 2021 by the Interagency Working Group on the SC-GHG (IWG) ("2021 Interim SC-GHG") (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 2 percent near-term Ramsey discount rate are shown for the 2023 SC-GHG estimates, and the climate benefits associated with the average SC-GHG at a 3 percent discount rate are shown for the 2021 interim SC-GHG estimates.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct

$PM_{2.5}$ emissions. Table 5 of the EPA's *Estimating the Benefit per Ton of Reducing PM2.5 Precursors from 21 Sectors* TSD provides a summary of the health impact endpoints quantified in the analysis. See section IV.L of this document for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC-GHG with a 2 percent near-term Ramsey discount rate for the 2023 SC-GHG estimates and the average SC-GHG with 3-percent discount rate for the 2021 interim SC-GHG estimates.

‡ Costs include incremental equipment costs.

‡‡ Operating Cost Savings are calculated based on the life-cycle cost analysis and national impact analysis as discussed in detail below. See sections IV.F and IV.H of this document. DOE's national impact analysis includes all impacts (both costs and benefits) along the distribution chain beginning with the increased costs to the manufacturer to manufacture the product and ending with the increase in price experienced by the consumer. DOE also separately conducts a detailed analysis on the impacts on manufacturers (*i.e.*, MIA). See section IV.J of this document. In the detailed MIA, DOE models manufacturers' pricing decisions based on assumptions regarding investments, conversion costs, cash flow, and margins. The MIA produces a range of impacts, which is the rule's expected impact on the INPV. The change in INPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. The annualized change in INPV is calculated using the industry weighted-average cost of capital value of 10.0 percent that is estimated in the MIA (see chapter 12 of the final rule TSD for a complete description of the industry weighted-average cost of capital). For CRE, the annualized change in INPV ranges from -$8.2 million to -$5.3 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. See section V.C of this document. DOE is presenting the range of impacts to the INPV under two markup manufacturer scenarios: the preservation-of-gross margin scenario, which is the manufacturer markup scenario used in the calculation of consumer operating cost savings in this table; and the preservation-of-operating-profit scenario, where DOE assumed manufacturers would not be able to increase per-unit operating profit in proportion to increases in manufacturer production costs. DOE includes the range of estimated annualized change in INPV in the above table, drawing on the MIA explained further in section IV.J of this document to provide additional context for assessing the estimated impacts of this final rule to society, including potential changes in production and consumption, which is consistent with OMB's Circular A-4 and E.O. 12866. If DOE were to include the INPV into the annualized net benefit calculation using the 2023 SC-GHG estimates for this final rule, the annualized net benefits would range from $537 million to $540 million at 3-percent discount rate and would range from $444 million to $447 million at 7-percent discount rate.

3. Removal of Obsolete Provisions

The energy conservation standards for CRE, located at 10 CFR 431.66, currently contain provisions in paragraphs (b) through (d) for equipment manufactured before March 27, 2017. As such, the provisions in paragraphs (b) through (d) are now obsolete for any CRE manufactured on or after March 27, 2017. In this final rule, DOE is removing these obsolete provisions.

In addition, paragraph (a) of 10 CFR 431.66 currently contains definitions for the terms ''AV'', ''V'', and ''TDA,'' which are similarly obsolete. The term ''AV'' is referenced only in paragraph (b)(1), which is now obsolete (as discussed in the previous paragraph). The definitions for the terms ''V'' and ''TDA'' are obsolete because the measurement instructions for volume and total display area were updated in the September 2023 Test Procedure Final Rule and are separately codified within appendix B to Subpart C of part 431. For these reasons, in this final rule, DOE is removing paragraph (a) of 10 CFR 431.66.

Given the removal of paragraphs (a) through (d) of 10 CFR 431.66, this final rule redesignates paragraph (e)—which contains the currently applicable standards—as paragraph (a). DOE is codifying the new and amended standards enacted by this final rule at paragraph (b). Finally, this final rule redesignates paragraph (f) (''Exclusions'') as paragraph (c).

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget has emphasized that such techniques may include identifying changing future compliance costs that might result from technological

innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action constitutes a ''significant regulatory action'' within the scope of section 3(f)(1) of E.O. 12866, as amended by E.O. 14094. Accordingly, pursuant to section 6(a)(3)(C) of E.O. 12866, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the final regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments are summarized in this preamble and further detail can be found in the technical support document for this rulemaking.

B. Review Under the Regulatory Flexibility Act

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

For manufacturers of CRE, the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. (*See* 13 CFR part 121.) The size standards are listed by North American Industry Classification System (''NAICS'') code and industry description and are available at *www.sba.gov/document/support-table-size-standards.* Manufacturing of CRE is classified under NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

1. Need for, and Objectives of, Rule

DOE is adopting new and amended energy conservation standards for CRE. EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C of EPCA, added by Pub. L. 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes CRE, the subject of this document. (42 U.S.C. 6311(1)(E)) EPCA established standards for certain categories of CRE (42 U.S.C. 6313(c)(2)–(4)) and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6313(c)(6)(B)) On March 28, 2014, DOE published a final rule that prescribed the current energy conservation standards for CRE manufactured on and after March 27, 2017. 79 FR 17725. EPCA provides that, not later than six years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the equipment do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(m)(1))

2. Significant Issues Raised by Public Comments in Response to the IRFA

In response to the October 2023 NOPR, AHRI provided a list of known suppliers of CRE sold in the United States that are not listed on the CCD site: Amtecko Industries, Inc.; Atlantic Food Bars; Borgen Merchandising Systems; Buffalo Outfront; Carrier; Cayuga Displays; Custom Deli's Inc.; Duke Manufacturing Co.; Federal Industries; GTI Designs; MTL Cool, a Due North brand; NAFCool; Picadeli; Pure Cold; USR Brands; Unity® Commercial Refrigeration; and Vortex Refrigeration. (AHRI, No. 81, at p. 6)

As part of DOE's market assessment for the October 2023 NOPR and this final rule, DOE compiled an equipment database of CRE models available in the United States. To develop a comprehensive equipment database of CRE basic models, DOE reviewed its CCD [161] supplemented by information from CEC's MAEDbS,[162] company websites, and prior CRE rulemakings. To identify chef bases or griddle stands and high-temperature units, DOE reviewed publicly available data from web scraping of company websites. DOE then reviewed its comprehensive equipment database to identify the OEMs of the CRE models identified. DOE compared the list of suppliers provided by AHRI against its list of CRE manufacturers to ensure completeness. Based on this comparison, DOE amended its manufacturer assessment to include 10 additional manufacturers, including 2 additional OEMs, Atlantic Food Bars and Borgen Merchandising Systems, for this final rule.

In response to the October 2023 NOPR and August 2024 NODA, NAMA commented the refrigerant transition is a large burden for smaller manufacturers investing in safety compliance to low-GWP refrigerants, capital improvements to factories, changes to service, and training of factory employees and service providers. (NAMA, No. 85 at p. 4; NAMA, No. 112 at p. 5)

In response to NAMA, DOE notes that it considered the October 2023 EPA Final Rule and the expenses associated with the refrigerant transition in the analytical baseline of the October 2023 NOPR, August 2024 NODA, and this final rule analysis. 88 FR 70196, 70284; 88 FR 70247, 68800. Although refrigerant transition costs associated with the October 2023 EPA Final Rule are not attributed to this rulemaking, DOE accounted for these refrigerant transition costs in the no-new-standards case and standards cases to better reflect industry finances and cash flow over the analysis period. Since industry would incur costs associated with the refrigerant transition regardless of any DOE rulemaking, this FRFA assesses the potential small business investments incurred as a direct result of this DOE rulemaking. DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the

[161] U.S. Department of Energy's Compliance Certification Database is available at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (last accessed Jan. 31, 2024).

[162] California Energy Commission's Modernized Appliance Efficiency Database is available at *cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (last accessed Jan. 31, 2024).

procedures and policies published on February 19, 2003. 68 FR 7990, 7993. See section V.B.2.e of this document for additional discussion of how DOE accounts for cumulative regulatory burden in its analysis.

In response to the October 2023 NOPR, Continental stated that adopting the standards proposed in the October 2023 NOPR with a 3-year lead-in would force them to exit in the market for many equipment configurations, which could negatively impact domestic employment and small businesses. (Continental, No. 86 at p. 6)

In response to the comment from Continental, DOE understands that small businesses could be affected disproportionately by amended standards. DOE analyzes the potential impacts of this final rule on small business manufacturers of CRE in section VI.B.5 of this document. As discussed in section III.A.2.a of this document, based on stakeholder comments and DOE's assessment of the overlapping Federal refrigerant regulations and recent changes to UL safety standards for CRE, DOE is extending the compliance period from the 3-years analyzed in the October 2023 NOPR (modeled as a 2028 compliance year) to 4-years (modeled as a 2029 compliance year) for this final rule. Furthermore, DOE notes that compared to the October 2023 NOPR, DOE is adopting less stringent standards for 22 out of the 28 directly analyzed equipment classes. See section VI.B.5 of this document for an analysis of the estimated conversion costs small businesses may incur as a result of this final rule.

3. Response to Comments Filed by Chief Counsel for Advocacy of the Small Business Administration

The SBA's Chief Counsel for Advocacy did not submit public comments on this rulemaking.

4. Description and Estimated Number of Small Entities Affected

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. 68 FR 7990. DOE conducted a market assessment to identify potential small manufacturers of CRE. DOE began its assessment by compiling an equipment database of CRE models available in the United States. As discussed in section VI.B.2 of this document, to develop a comprehensive equipment database of CRE basic models, DOE reviewed its CCD [163] supplemented by information from CEC's MAEDbS,[164] individual company websites, stakeholder comments (AHRI, No. 81 at p. 6), and prior CRE rulemakings. 79 FR 17725. To identify chef bases or griddle stands and high-temperature units, DOE reviewed publicly available data from web scraping of retail websites. DOE then reviewed the comprehensive equipment database to identify the companies that sell the CRE models identified. DOE then consulted publicly available data, such as manufacturer websites, manufacturer specifications and equipment literature, import/export logs (*e.g.,* bills of lading from ImportYeti [165]), and basic model numbers, to identify OEMs of CRE covered by this rulemaking. DOE further relied on public data and subscription-based market research tools (*e.g.,* Dun & Bradstreet reports [166]) to determine company, location, headcount, and annual revenue. DOE also asked industry representatives if they were aware of any small OEMs during manufacturer interviews. DOE screened out companies that do not offer equipment covered by this rulemaking, do not meet the SBA's definition of a ''small business,'' or are foreign-owned and operated.

For the October 2023 NOPR, DOE initially identified 83 OEMs that sell CRE in the United States. For this final rule, DOE refreshed its database of model listings to include the most up-to-date information on CRE models currently available on the U.S. market. Through its comprehensive review of its updated equipment database, other public sources, and stakeholder comments in response to the October 2023 NOPR, DOE identified 43 additional OEMs selling CRE in the United States (2 of which were identified as small, domestic businesses). DOE also determined 23 OEMs (7 of which were identified as small domestic businesses in the October 2023 NOPR) do not currently produce covered CRE for the U.S. market (*i.e.,* they do not manufacture CRE in-house). Therefore, of the 103 OEMs identified in this final rule, DOE determined that 20 companies qualify as small businesses and are not foreign-owned and operated.

5. Description of Reporting, Recordkeeping, and Other Compliance Requirements

Of the 20 small domestic CRE OEMs, 19 OEMs manufacture vertical equipment classes (*i.e.,* vertical open (''VOP''), vertical closed transparent (''VCT''), or vertical closed solid (''VCS'')); 7 OEMs manufacture semi-vertical open (''SVO'') equipment classes (*i.e.,* medium temperature remote condensing (''RC''; ''SVO.RC.M'') or medium temperature self-contained (''SC''; ''SVO.SC.M'')); 6 OEMs manufacture service-over-counter (''SOC'') equipment classes (*i.e.,* SOC.RC.M or SOC.SC.M); 8 OEMs manufacture horizontal equipment classes (*i.e.,* horizontal open (''HZO''), horizontal closed transparent (''HCT''), or horizontal closed solid (''HCS'')); and 3 OEMs manufacture chef bases or griddle stands.

For the purposes of this FRFA, DOE assumed that the industry capital conversion costs would be evenly distributed across the OEMs that manufacture each equipment class to avoid underestimating the potential capital investments small manufacturers may incur as a result of the adopted standard. As discussed in section IV.J.2.c of this document, DOE scaled the industry capital conversion costs by the number of relevant OEMs offering models of the respective equipment class. For product conversion costs, DOE assumed all small businesses would choose to redesign or replace models that do not meet TSL 3 efficiency levels. DOE used unique basic model counts to scale the industry product conversion costs.

DOE expects manufacturers could meet TSL 3 without implementing occupancy sensors with dimming capability, triple-pane doors with krypton fill, or vacuum-insulated glass doors. At this level, only 2 self-contained equipment classes, HCT.SC.I and SOC.SC.M (together accounting for approximately 3 percent of transparent door CRE shipments), would likely incorporate improved door designs, which may necessitate new fixtures. For some self-contained equipment classes totaling approximately 50 percent of self-contained CRE shipments, manufacturers would likely have to incorporate variable-speed compressors into CRE designs. To incorporate variable-speed compressors, which could be larger than existing single-speed compressors, manufacturers may need new tools for the baseplate.

[163] U.S. Department of Energy's Compliance Certification Database is available at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (last accessed Jan. 31, 2024).

[164] California Energy Commission's Modernized Appliance Efficiency Database is available at *cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (last accessed Jan. 31, 2024).

[165] ImportYeti, LLC. ''ImportYeti.'' *www.importyei.com* (last accessed March 15, 2024).

[166] D&B Hoover's subscription login is accessible at *app.dnbhoovers.com.*

Product conversion costs may be necessary to qualify, source, and test new high-efficiency components (*e.g.,* BLDC fan motors, variable-speed compressors).

Of the 19 small OEMs of vertical equipment classes, DOE expects 15 OEMs would incur some conversion costs to redesign models that do not currently meet the efficiency levels adopted in this final rule. The remaining 4 small OEMs would likely not incur conversion costs as a direct result of the standard as all their vertical CRE models currently meet or exceed TSL 3. Vertical equipment classes account for approximately 90 percent of industry shipments. Manufacturers will likely incorporate night curtains for all VOP equipment classes and BLDC condenser fan motors for nearly all vertical self-contained equipment classes. DOE further expects manufacturers to implement variable-speed compressors into some self-contained vertical equipment classes.

DOE expects all 7 small OEMs of semi-vertical equipment classes would incur some conversion costs to redesign models that do not currently meet the efficiency levels adopted in this final rule. Semi-vertical equipment classes account for approximately 2 percent of industry shipments in 2028. For SVO.SC.M, manufacturers will likely incorporate night curtains, BLDC condenser fan motors, and variable-speed compressors to meet TSL 3. For SVO.RC.M, manufacturers will likely incorporate night curtains to meet TSL 3.

Out of the 6 small OEMs of service-over-counter equipment classes, DOE expects 5 OEMs would incur some conversion costs to redesign models that do not currently meet the efficiency levels adopted in this final rule. The remaining small OEM would likely not incur conversion costs as a direct result of the standard as all their service-over-counter CRE models currently meet or exceed TSL 3. Service-over-counter equipment classes account for less than 1 percent of industry shipments. Manufacturers will likely incorporate BLDC evaporator and condenser fan motors, variable-speed compressors, and triple-pane doors with argon fill for SOC.SC.M to meet TSL 3. For SOC.RC.M, TSL 3 corresponds to the baseline efficiency level.

Out of the 8 small OEMs of horizontal equipment classes, DOE expects 7 OEMs would incur some conversion costs to redesign models that do not currently meet the efficiency levels adopted in this final rule. The remaining small OEM would likely not incur conversion costs as a direct result of the standard as all their horizontal CRE models currently meet or exceed TSL 3. Horizontal equipment classes account for approximately 6 percent of industry shipments. Manufacturers will likely implement BLDC condenser fan motors in both HCS equipment classes to meet TSL 3. Manufacturers will likely incorporate triple-pane doors with argon fill for HCT.SC.I. Manufacturers will likely incorporate BLDC condenser fan motors and variable-speed compressors for some HZO equipment classes to meet TSL 3. For HCT.SC.L, HCT.SC.M, HZO.RC.L, and HZO.RC.M, TSL 3 corresponds to the baseline efficiency levels.

DOE expects all 3 small OEMs offering chef base or griddle stand equipment to incur some conversion costs to redesign models that do not meet efficiency levels at TSL 3. Chef bases or griddle stands account for approximately 1 percent of industry shipments. Manufacturers would likely incorporate BLDC condenser fan motors and variable-speed compressors for CB.SC.M. None of the small businesses identified manufacture CB.SC.L models.

Based on annual revenue estimates from market research tools (*e.g.,* Dun & Bradstreet reports), the annual revenue of the small, domestic OEMs identified range from approximately $2.3 million to $307.9 million, with an average annual revenue of approximately $74.8 million. DOE estimates that conversion costs could range from $0.0 million to $12.9 million, with the average per OEM conversion costs of $1.5 million. The estimated total conversion costs as a percent of company revenue over the 4-year conversion period range from approximately 0.0 percent to 5.0 percent, with an average of 1.0 percent. See table VI.1 for additional details.

Table VI.1 Potential Small Business Impacts (TSL 3)

Company	Est. Conversion Costs ($ millions)	Est. Annual Revenue ($ millions)	Conversion Costs as a % of Conversion Period Revenue**	Vertical *	Semi-Vertical*	Service-Over-Counter *	Horizontal *	Chef Base*
A	$0.5	$2.3	5.0%	X				
B	$0.8	$4.7	4.2%	X		X		
C	$12.9	$100.7	3.2%	X			X	X
D	$1.0	$9.0	2.9%	X	X	X		
E	$7.7	$131.1	1.5%	X	X	X	X	
F	$2.1	$110.3	0.5%	X	X	X	X	X
G	$1.5	$85.3	0.4%	X			X	
H	$1.6	$94.5	0.4%	X	X	X	X	
I	$0.4	$23.6	0.4%	X	X			
J	$0.1	$9.3	0.3%	X	X	X		
K	$0.1	$11.8	0.1%	X			X	
L	$0.1	$48.7	0.1%	X			X	
M	$0.2	$96.8	0.1%	X				
N	$0.2	$167.3	0.0%	X				X
O	$0.0	$20.0	0.0%	X	X			
P	$0.0	$27.5	0.0%	X				
Q	$0.0***	$4.0	0.0%				X	
R	$0.0***	$307.9	0.0%	X				
S	$0.0***	$217.0	0.0%	X				
T	$0.0***	$24.0	0.0%	X				

*The "X" indicates that the manufacturer offers CRE models of the respective equipment family.
**This column is calculated by dividing the estimated conversion costs by the revenue during the 4-year conversion period: (Est. Conversion Costs) ÷ [(Est. Annual Revenue) × 4 years].
***All models of directly analyzed CRE equipment classes meet or exceed the efficiency levels adopted in this final rule. Therefore, DOE does not expect these manufacturers would incur conversion costs as direct result of the final rule.

6. Significant Alternatives Considered and Steps Taken To Minimize Significant Economic Impacts on Small Entities

The discussion in the previous section analyzes impacts on small businesses that would result from the adopted standards, represented by TSL 3. In reviewing alternatives to the adopted standards, DOE examined energy conservation standards set at lower efficiency levels. While TSL 1 and TSL 2 would reduce the impacts on small business manufacturers, it would come at the expense of a reduction in energy savings.

TSL 1 achieves 78 percent lower energy savings compared to the energy savings at TSL 3. TSL 2 achieves 74 percent lower energy savings compared to the energy savings at TSL 3.

Establishing standards at TSL 3 balances the benefits of the energy savings at TSL 3 with the potential burdens placed on CRE manufacturers, including small business manufacturers. Accordingly, DOE is not adopting one of the other TSLs considered in the analysis, or the other policy alternatives examined as part of the regulatory impact analysis and included in chapter 17 of the final rule TSD.

Additionally, DOE notes that statutory provisions under EPCA state that should the Secretary determine that a 3-year period is inadequate, the Secretary may provide that the amended standard can apply to CRE manufactured on or after the date that is not later than 5 years after the date on which the final rule is published in the **Federal Register**. (See 42 U.S.C. 6313(c)(6)(C)(ii)) Pursuant to this EPCA provision, DOE is extending the compliance period from the 3-years analyzed in the October 2023 NOPR (modeled as a 2028 compliance year) to 4-years (modeled as a 2029 compliance year) for this final rule. DOE has determined that a longer compliance period for CRE is warranted based on stakeholder comments and DOE's assessment of the overlapping Federal refrigerant regulations and recent changes to UL safety standards for CRE. DOE understands that the longer compliance period will help mitigate cumulative regulatory burden by allowing manufacturers of CRE, including small businesses, more flexibility to spread investments across 4 years instead of 3 years. Manufacturers, including small businesses, will also have more time to recoup any investments made to redesign CRE models in compliance with the October 2023 EPA Final Rule as compared to a 3-year compliance period. 88 FR 73098.

Additional compliance flexibilities may be available through other means. Manufacturers subject to DOE's energy efficiency standards may apply to DOE's Office of Hearings and Appeals for exception relief under certain circumstances. Manufacturers should refer to 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

Manufacturers of CRE must certify to DOE that their products comply with

any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for CRE, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including CRE. (*See generally* 10 CFR part 429). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act of 1969 (''NEPA''), DOE has analyzed this rule in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6316(e)(2)–(3); 42 U.S.C. 6297. Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

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

DOE has concluded that this final rule may require expenditures of $100 million or more in any one year by the private sector. Such expenditures may include: (1) investment in research and development and in capital expenditures by CRE manufacturers in the years between the final rule and the compliance date for the new standards; and (2) incremental additional expenditures by consumers to purchase higher-efficiency CRE, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the final rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector

mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this document and the TSD for this final rule respond to those requirements.

Under section 205 of UMRA, DOE is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(m) or a product-specific directive in 6295, and 42 U.S.C. 6316(e)(1), and 6313(c)(6), this final rule establishes new and amended energy conservation standards for CRE that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified, as required by sections 6316(e)(1), 6295(o)(2)(A), and 6295(o)(3)(B). A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this final rule.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. When developing a Family Policymaking Assessment, agencies must assess whether: (1) the action strengthens or erodes the stability or safety of the family and, particularly, the marital commitment; (2) the action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children; (3) the action helps the family perform its functions, or substitutes governmental activity for the function; (4) the action increases or decreases disposable income or poverty of families and children; (5) the proposed benefits of the action justify the financial impact on the family; (6) the action may be carried out by State or local government or by the family; and whether (7) the action establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society. In evaluating the above factors, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment as none of the above factors are implicated. Further, this proposed determination would not have any financial impact on families nor any impact on the autonomy or integrity of the family as an institution.

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Although this final rule would not have any impact on the autonomy or integrity of the family as an institution as defined, this final rule could impact a family's well-being. When developing a Family Policymaking Assessment, agencies must assess whether: (1) the action strengthens or erodes the stability or safety of the family and, particularly, the marital commitment; (2) the action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children; (3) the action helps the family perform its functions, or substitutes governmental activity for the function; (4) the action increases or decreases disposable income or poverty of families and children; (5) the proposed benefits of the action justify the financial impact on the family; (6) the action may be carried out by State or local government or by the family; and whether (7) the action establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society.

DOE has considered how the benefits of this final rule compare to the possible financial impact on a family (the only factor listed that is relevant to this rule). As part of its rulemaking process, DOE must determine whether the energy conservation standards enacted in this final rule are economically justified. As discussed in section V.C.1 of this document, DOE has determined that the standards enacted in this final rule are economically justified because the benefits to consumers would far outweigh the costs to manufacturers. Customers will also see LCC savings as a result of this final rule. Moreover, as discussed further in section V.B.1 of this document, DOE has determined that for small businesses, average LCC savings and PBP at the considered efficiency levels are similar compared to those for all purchasers. Further, the standards will also result in climate and health benefits for all businesses.

I. Review Under Executive Order 12630

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

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

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

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that this regulatory action, which sets forth new and amended energy conservation standards for CRE, is not a significant energy action because the standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this final rule.

L. Information Quality

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

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and prepared a report describing that peer review.[167] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve DOE's analyses. DOE is in the process of evaluating the resulting report.[168]

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The Office of Information and Regulatory Affairs has determined that this rule meets the criteria set forth in 5 U.S.C. 804(2).

VII. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on December 20, 2024, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 20, 2024.

Treena V. Garrett,

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

For the reasons set forth in the preamble, DOE amends part 431 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 431.62 by:
■ a. Adding in alphabetical order definitions for ''Cold-wall evaporator,'' ''Drawer unit,'' and ''Forced-air evaporator;''
■ b. Revising the definition of ''Ice-cream freezer;''
■ c. Adding in alphabetical order a definition for ''Pass-through doors;''
■ d. Revising the definition of ''Rating temperature;'' and
■ e. Adding in alphabetical order definitions for ''Roll-in door,'' ''Roll-through doors,'' and ''Sliding door.''

The additions and revisions read as follows.

§ 431.62 Definitions concerning commercial refrigerators, freezers, and refrigerator-freezers.

* * * * *

Cold-wall evaporator means an evaporator that comprises a portion or all of the commercial refrigerator, freezer, and refrigerator-freezer cabinet's interior surface that transfers heat through means other than fan-forced convection.

* * * * *

Drawer unit means a commercial refrigerator, freezer, or refrigerator-freezer in which all the externally accessed compartments are drawers.

Forced-air evaporator means an evaporator that employs the use of fan-forced convection to transfer heat within the commercial refrigerator, freezer, and refrigerator-freezer cabinet.

* * * * *

Ice-cream freezer means:

(1) Prior to Monday, January 22, 2029, a commercial freezer that is capable of an operating temperature at or below −5.0 °F and that the manufacturer designs, markets, or intends specifically for the storing, displaying, or dispensing of ice cream or other frozen desserts; or

(2) On or after Monday, January 22, 2029, a commercial freezer that is capable of an operating temperature at or below −13.0 °F and that the manufacturer designs, markets, or intends specifically for the storing, displaying, or dispensing of ice cream or other frozen desserts.

* * * * *

Pass-through doors mean doors located on both the front and rear of the commercial refrigerator, freezer, and refrigerator-freezer.

* * * * *

Rating temperature means the integrated average temperature a unit must maintain during testing, as determined in accordance with section

[167] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at *energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0* (last accessed April 15, 2024).

[168] The report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.*

2.1. or section 2.2. of appendix B to this subpart, as applicable.

* * * * *

Roll-in door means a door that includes a door sweep to seal the bottom of the door and may include a ramp that allows wheeled racks of product to be rolled into the commercial refrigerator, freezer, and refrigerator-freezer.

Roll-through doors means doors located on both the front and rear of the commercial refrigerator, freezer, and refrigerator-freezer, that includes a door sweep to seal the bottom of the door and may include a ramp that allows wheeled racks of product to be rolled into and through the commercial refrigerator, freezer, and refrigerator-freezer.

* * * * *

Sliding door means a door that opens when a portion of the door moves in a direction generally parallel to its surface.

* * * * *

■ 3. Revise § 431.66 to read as follows:

§ 431.66 Energy conservation standards and their effective dates.

(a) Each commercial refrigerator, freezer, and refrigerator-freezer with a self-contained condensing unit designed for holding temperature applications and with solid or transparent doors; commercial refrigerator with a self-contained condensing unit designed for pull-down temperature applications and with transparent doors; commercial refrigerator, freezer, and refrigerator-freezer with a self-contained condensing unit and without doors; commercial refrigerator, freezer, and refrigerator-freezer with a remote condensing unit; and commercial ice-cream freezer manufactured on or after March 27, 2017, and before Monday, January 22, 2029, shall have a daily energy consumption (in kilowatt-hours per day or ''kWh/day'') that does not exceed the levels specified:

(1) For equipment other than hybrid equipment, refrigerator/freezers, or wedge cases:

TABLE 1 TO PARAGRAPH (a)(1)—MAXIMUM DAILY ENERGY CONSUMPTION STANDARDS

Equipment category	Condensing unit configuration	Equipment family	Rating temp. °F	Operating temp. °F	Equipment class designation *	Maximum daily energy consumption ** (kWh/day)
Remote Condensing Commercial Refrigerators and Commercial Freezers.	Remote (RC)	Vertical Open (VOP)	38 (M)	≥32	VOP.RC.M	0.64 × TDA + 4.07
			0 (L)	<32	VOP.RC.L	2.2 × TDA + 6.85
		Semivertical Open (SVO).	38 (M)	≥32	SVO.RC.M	0.66 × TDA + 3.18
			0 (L)	<32	SVO.RC.L	2.2 × TDA + 6.85
		Horizontal Open (HZO)	38 (M)	≥32	HZO.RC.M	0.35 × TDA + 2.88
			0 (L)	<32	HZO.RC.L	0.55 × TDA + 6.88
		Vertical Closed Transparent (VCT).	38 (M)	≥ 32	VCT.RC.M	0.15 × TDA + 1.95
			0 (L)	<32	VCT.RC.L	0.49 × TDA + 2.61
		Horizontal Closed Transparent (HCT).	38 (M)	≥32	HCT.RC.M	0.16 × TDA + 0.13
			0 (L)	<32	HCT.RC.L	0.34 × TDA + 0.26
		Vertical Closed Solid (VCS).	38 (M)	≥32	VCS.RC.M	0.1 × V + 0.26
			0 (L)	< 32	VCS.RC.L	0.21 × V + 0.54
		Horizontal Closed Solid (HCS).	38 (M)	≥32	HCS.RC.M	0.1 × V + 0.26
			0 (L)	<32	HCS.RC.L	0.21 × V + 0.54
		Service Over Counter (SOC).	38 (M)	≥32	SOC.RC.M	0.44 × TDA + 0.11
			0 (L)	<32	SOC.RC.L	0.93 × TDA + 0.22
Self-Contained Commercial Refrigerators and Commercial Freezers Without Doors.	Self-Contained (SC)	Vertical Open (VOP)	38 (M)	≥32	VOP.SC.M	1.69 × TDA + 4.71
			0 (L)	<32	VOP.SC.L	4.25 × TDA + 11.82
		Semivertical Open (SVO).	38 (M)	≥32	SVO.SC.M	1.7 × TDA + 4.59
			0 (L)	<32	SVO.SC.L	4.26 × TDA + 11.51
		Horizontal Open (HZO)	38 (M)	≥32	HZO.SC.M	0.72 × TDA + 5.55
			0 (L)	<32	HZO.SC.L	1.9 × TDA + 7.08
Self-Contained Commercial Refrigerators and Commercial Freezers With Doors.	Self-Contained (SC)	Vertical Closed Transparent (VCT).	38 (M)	≥32	VCT.SC.M	0.1 × V + 0.86
			0 (L)	<32	VCT.SC.L	0.29 × V + 2.95
		Vertical Closed Solid (VCS).	38 (M)	≥32	VCS.SC.M	0.05 × V + 1.36
			0 (L)	<32	VCS.SC.L	0.22 × V + 1.38
		Horizontal Closed Transparent (HCT).	38 (M)	≥32	HCT.SC.M	0.06 × V + 0.37
			0 (L)	<32	HCT.SC.L	0.08 × V + 1.23
		Horizontal Closed Solid (HCS).	38 (M)	≥32	HCS.SC.M	0.05 × V + 0.91
			0 (L)	<32	HCS.SC.L	0.06 × V + 1.12
		Service Over Counter (SOC).	38 (M)	≥32	SOC.SC.M	0.52 × TDA + 1
			0 (L)	<32	SOC.SC.L	1.1 × TDA + 2.1
Self-Contained Commercial Refrigerators with Transparent Doors for Pull-Down Temperature Applications.	Self-Contained (SC)	Pull-Down (PD)	38 (M)	≥32	PD.SC.M	0.11 × V + 0.81
Commercial Ice-Cream Freezers.	Remote (RC)	Vertical Open (VOP)	−15 (I)	≤−5	VOP.RC.I	2.79 × TDA + 8.7
		Semivertical Open (SVO).			SVO.RC.I	2.79 × TDA + 8.7
		Horizontal Open (HZO)			HZO.RC.I	0.7 × TDA + 8.74
		Vertical Closed Transparent (VCT).			VCT.RC.I	0.58 × TDA + 3.05
		Horizontal Closed Transparent (HCT).			HCT.RC.I	0.4 × TDA + 0.31

TABLE 1 TO PARAGRAPH (a)(1)—MAXIMUM DAILY ENERGY CONSUMPTION STANDARDS—Continued

Equipment category	Condensing unit configuration	Equipment family	Rating temp. °F	Operating temp. °F	Equipment class designation *	Maximum daily energy consumption ** (kWh/day)
	Self-Contained (SC)	Vertical Closed Solid (VCS).			VCS.RC.I	0.25 × V + 0.63
		Horizontal Closed Solid (HCS).			HCS.RC.I	0.25 × V + 0.63
		Service Over Counter (SOC)			SOC.RC.I	1.09 × TDA + 0.26
		Vertical Open (VOP)			VOP.SC.I	5.4 × TDA + 15.02
		Semivertical Open (SVO).			SVO.SC.I	5.41 × TDA + 14.63
		Horizontal Open (HZO)			HZO.SC.I	2.42 × TDA + 9
		Vertical Closed Transparent (VCT).			VCT.SC.I	0.62 × TDA + 3.29
		Horizontal Closed Transparent (HCT).			HCT.SC.I	0.56 × TDA + 0.43
		Vertical Closed Solid (VCS).			VCS.SC.I	0.34 × V + 0.88
		Horizontal Closed Solid (HCS).			HCS.SC.I	0.34 × V + 0.88
		Service Over Counter (SOC).			SOC.SC.I	1.53 × TDA + 0.36

* The meaning of the letters in this column is indicated in the columns to the left.
** ''V'' is the volume, expressed in ft^3, as determined in appendix B to this subpart. ''TDA'' is the total display area, expressed in ft^2, as determined in appendix B to this subpart.

(2) For commercial refrigeration equipment with two or more compartments (*i.e.,* hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers), the maximum daily energy consumption (MDEC) for each model shall be the sum of the MDEC values for all of its compartments. For each compartment, measure the TDA or volume of that compartment, and determine the appropriate equipment class based on that compartment's equipment family, condensing unit configuration, and designed operating temperature. The MDEC limit for each compartment shall be the calculated value obtained by entering that compartment's TDA or volume into the standard equation in paragraph (a)(1) of this section for that compartment's equipment class. Measure the calculated daily energy consumption (CDEC) or total daily energy consumption (TDEC) for the entire case:

(i) For remote condensing commercial hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers, where two or more independent condensing units each separately cool only one compartment, measure the total refrigeration load of each compartment separately according to AHRI Standard 1200 (I–P)-2010 test procedure (incorporated by reference, see § 431.63). Calculate compressor energy consumption (CEC) for each compartment using table 1 in ARI Standard 1200–2006 (incorporated by reference, see § 431.63) or AHRI Standard 1200 (I–P)-2010 (incorporated by reference, see § 431.63) using the saturated evaporator temperature for that compartment. The CDEC for the entire case shall be the sum of the CEC for each compartment, fan energy consumption (FEC), lighting energy consumption (LEC), anti-condensate energy consumption (AEC), defrost energy consumption (DEC), and condensate evaporator pan energy consumption (PEC) (as measured in AHRI Standard 1200 (I–P)-2010).

(ii) For remote condensing commercial hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers, where two or more compartments are cooled collectively by one condensing unit, measure the total refrigeration load of the entire case according to the AHRI Standard 1200 (I–P)-2010 test procedure (incorporated by reference, see § 431.63). Calculate a weighted saturated evaporator temperature for the entire case by:

multiplying the saturated evaporator temperature of each compartment by the volume of that compartment (as measured in AHRI Standard 1200 (I–P)-2010 (incorporated by reference, see § 431.63)),

summing the resulting values for all compartments; and

dividing the resulting total by the total volume of all compartments.

Calculate the CEC for the entire case using table 1 in ARI Standard 1200–2006 (incorporated by reference, see § 431.63) or AHRI Standard 1200 (I–P)-2010 (incorporated by reference, see § 431.63), using the total refrigeration load and the weighted average saturated evaporator temperature. The CDEC for the entire case shall be the sum of the CEC, FEC, LEC, AEC, DEC, and PEC.

(iii) For self-contained commercial hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers, measure the TDEC for the entire case according to the AHRI Standard 1200 (I–P)-2010 test procedure (incorporated by reference, see § 431.63).

(3) For remote condensing and self-contained wedge cases, measure the CDEC or TDEC according to the AHRI Standard 1200 (I–P)-2010 test procedure (incorporated by reference, see § 431.63). For wedge cases in equipment classes for which a volume metric is used, the MDEC shall be the amount derived from the appropriate standards equation in paragraph (a)(1) of this section. For wedge cases of equipment classes for which a TDA metric is used, the MDEC for each model shall be the amount derived by incorporating into the standards equation in paragraph (a)(1) of this section for the equipment class a value for the TDA that is the product of:

(i) The vertical height of the air-curtain (or glass in a transparent door) and

(ii) The largest overall width of the case, when viewed from the front.

(b) Each commercial refrigerator, freezer, and refrigerator-freezer, except as specified in paragraph (c) of this section, manufactured on or after Monday, January 22, 2029, shall have a daily energy consumption (in kilowatt-hours per day or ''kWh/day''), when measured in accordance with the DOE

test procedure at appendix B to this subpart, that does not exceed the following:

(1) For commercial refrigerators, freezers, and refrigerator-freezers other than commercial hybrids or commercial refrigerator-freezers:

TABLE 2 TO PARAGRAPH (b)(1)—MAXIMUM DAILY ENERGY CONSUMPTION STANDARDS FOR EQUIPMENT CONNECTED TO REMOTE CONDENSING UNITS

Condensing unit configuration	Equipment family	Rating temperature (°F)	Operating temperature (°F)	Equipment class designation *	Maximum daily energy consumption ** (kWh/day)
Remote Condensing (RC)	Vertical Open (VOP)	55.0 (H)	>40.0	VOP.RC.H	0.551 × TDA + 3.506
		38.0 (M)	≤40.0 and ≥32.0	VOP.RC.M	0.591 × TDA + 3.758
		0.0 (L)	<32.0	VOP.RC.L	2.079 × TDA + 6.472
		−15.0 (I)	≤−13.0	VOP.RC.I	2.637 × TDA + 8.222
	Semivertical Open (SVO)	55.0 (H)	>40.0	SVO.RC.H	0.572 × TDA + 2.756
		38.0 (M)	≤40.0 and ≥32.0	SVO.RC.M	0.611 × TDA + 2.944
		0.0 (L)	<32.0	SVO.RC.L	2.079 × TDA + 6.473
		−15.0 (I)	≤−13.0	SVO.RC.I	2.637 × TDA + 8.222
	Horizontal Open (HZO)	55.0 (H)	>40.0	HZO.RC.H	0.350 × TDA + 2.880
		38.0 (M)	≤40.0 and ≥32.0	HZO.RC.M	0.350 × TDA + 2.880
		0.0 (L)	<32.0	HZO.RC.L	0.550 × TDA + 6.880
		−15.0 (I)	≤−13.0	HZO.RC.I	0.700 × TDA + 8.740
	Vertical Closed Transparent (VCT).	55.0 (H)	>40.0	VCT.RC.H	0.150 × TDA + 1.950
		38.0 (M)	≤40.0 and ≥32.0	VCT.RC.M	0.150 × TDA + 1.950
		0.0 (L)	<32.0	VCT.RC.L	0.490 × TDA + 2.610
		−15.0 (I)	≤−13.0	VCT.RC.I	0.580 × TDA + 3.050
	Horizontal Closed Transparent (HCT).	38.0 (M)	≥32.0	HCT.RC.M	0.160 × TDA + 0.130
		0.0 (L)	<32.0	HCT.RC.L	0.340 × TDA + 0.260
		−15.0 (I)	≤−13.0	HCT.RC.I	0.356 × TDA + 0.276
	Vertical Closed Solid (VCS)	55.0 (H)	>40.0	VCS.RC.H	0.100 × V + 0.260
		38.0 (M)	≤40.0 and ≥32.0	VCS.RC.M	0.100 × V + 0.260
		0.0 (L)	<32.0	VCS.RC.L	0.210 × V + 0.540
		−15.0 (I)	≤−13.0	VCS.RC.I	0.250 × V + 0.630
	Horizontal Closed Solid (HCS)	38.0 (M)	≥32.0	HCS.RC.M	0.100 × V + 0.260
		0.0 (L)	<32.0	HCS.RC.L	0.210 × V + 0.540
		−15.0 (I)	≤−13.0	HCS.RC.I	0.250 × V + 0.630
	Service Over Counter (SOC)	55.0 (H)	>40.0	SOC.RC.H	0.440 × TDA + 0.110
		38.0 (M)	≤40.0 and ≥ 32.0	SOC.RC.M	0.440 × TDA + 0.110
		0.0 (L)	<32.0	SOC.RC.L	0.930 × TDA + 0.220
		−15.0 (I)	≤−13.0	SOC.RC.I	0.970 × TDA + 0.231
	Chef Base (CB)	38.0 (M)	≥32.0	CB.RC.M	0.050 × V + 0.686
		0.0 (L)	<32.0	CB.RC.L	0.194 × V + 1.693

* The meaning of the letters in this column is indicated in the columns to the left.
** "V" is the volume, expressed in ft^3, as determined in appendix B to this subpart. "TDA" is the total display area, expressed in ft^2, as determined in appendix B to this subpart.

TABLE 3 TO PARAGRAPH (b)(1)—MAXIMUM DAILY ENERGY CONSUMPTION STANDARDS FOR EQUIPMENT CONNECTED TO SELF-CONTAINED UNITS

Condensing unit configuration	Equipment family	Rating temperature (°F)	Operating temperature (°F)	Capacity range	Equipment class designation *	Maximum daily energy consumption ** (kWh/day)
Self-Contained (SC)	Vertical Open (VOP)	55.0 (H)	>40.0	All TDAs	VOP.SC.H	0.890 × TDA + 2.480
		38.0 (M)	≤40.0 and ≥32.0	TDA ≤17 ft^2	VOP.SC.M (≤17)	1.230 × TDA + 3.428
				TDA >17 ft^2	VOP.SC.M (>17)	1.69 × TDA + 4.71
		0.0 (L)	<32.0	All TDAs	VOP.SC.L	3.092 × TDA + 8.598
		−15.0 (I)	≤−13.0		VOP.SC.I	3.928 × TDA + 10.926
	Semivertical Open (SVO).	55.0 (H)	>40.0	All TDAs	SVO.SC.H	1.045 × TDA + 2.822
		38.0 (M)	≤40.0 and ≥32.0	TDA ≤15 ft^2	SVO.SC.M (≤15)	1.207 × TDA + 3.258
				TDA >15 ft^2	SVO.SC.M (>15)	1.7 × TDA + 4.59
		0.0 (L)	<32.0	All TDAs	SVO.SC.L	3.024 × TDA + 8.169
		−15.0 (I)	≤−13.0		SVO.SC.I	3.840 × TDA + 10.384
	Horizontal Open (HZO).	55.0 (H)	>40.0	All TDAs	HZO.SC.H	0.546 × TDA + 4.211
		38.0 (M)	≤40.0 and ≥32.0		HZO.SC.M	0.532 × TDA + 4.100
		0.0 (L)	<32.0	TDA ≤35 ft^2	HZO.SC.L (≤35)	1.490 × TDA + 5.554
				TDA >35 ft^2	HZO.SC.L (>35)	1.9 × TDA + 7.08
		−15.0 (I)	≤−13.0	All TDAs	HZO.SC.I	1.900 × TDA + 7.065
	Vertical Closed Transparent (VCT).	55.0 (H)	>40.0	All TDAs	VCT.SC.H	0.047 × V + 0.493
		38.0 (M)	≤40.0 and ≥32.0	V ≤100 ft^3	VCT.SC.M (≤100)	0.073 × V + 0.630
					VCT.SC.M (≤100) with Feature ***	0.078 × V + 0.674
				V >100 ft^3	VCT.SC.M (>100)	0.1 × V + 0.86
		0.0 (L)	<32.0	V ≤70 ft^3	VCT.SC.L (≤70)	0.233 × V + 2.374
					VCT.SC.L (≤70) with Feature ***	0.249 × V + 2.540
				V >70 ft^3	VCT.SC.L (>70)	0.29 × V + 2.95
		−15.0 (I)	≤−13.0	All Volumes	VCT.SC.I	0.620 × TDA + 3.290

TABLE 3 TO PARAGRAPH (b)(1)—MAXIMUM DAILY ENERGY CONSUMPTION STANDARDS FOR EQUIPMENT CONNECTED TO SELF-CONTAINED UNITS—Continued

Condensing unit configuration	Equipment family	Rating temperature (°F)	Operating temperature (°F)	Capacity range	Equipment class designation *	Maximum daily energy consumption ** (kWh/day)
	Vertical Closed Solid (VCS).	55.0 (H)	>40.0	All Volumes	VCS.SC.H	0.021 × V + 0.793
		38.0 (M)	≤40.0 and ≥32.0	All Volumes	VCS.SC.M	0.038 × V + 1.039
					VCS.SC.M with Feature ***.	0.041 × V + 1.112
		0.0 (L)	<32.0	V ≤100 ft³	VCS.SC.L (≤100)	0.169 × V + 1.059
					VCS.SC.L (≤100) with Feature ***.	0.181 × V + 1.133
				V >100 ft³	VCS.SC.L (>100)	0.22 × V + 1.38
		−15.0 (I)	≤−13.0	All Volumes	VCS.SC.I	0.264 × V + 0.683
	Horizontal Closed Transparent (HCT).	38.0 (M)	≥32.0	All Volumes	HCT.SC.M	0.060 × V + 0.370
		0.0 (L)	<32.0		HCT.SC.L	0.080 × V + 1.230
		−15.0 (I)	≤−13.0		HCT.SC.I	0.498 × TDA + 0.383
	Horizontal Closed Solid (HCS).	38.0 (M)	≥32.0	All Volumes	HCS.SC.M	0.037 × V + 0.675
		0.0 (L)	<32.0		HCS.SC.L	0.055 × V + 1.033
					HCS.SC.L with Feature ***.	0.059 × V + 1.105
		−15.0 (I)	≤−13.0		HCS.SC.I	0.313 × V + 0.811
	Service Over Counter (SOC).	55.0 (H)	>40.0	All TDAs	SOC.SC.H	0.304 × TDA + 0.584
		38.0 (M)	≤40.0 and ≥32.0	TDA ≤40 ft²	SOC.SC.M (≤40)	0.356 × TDA + 0.685
				TDA >40 ft²	SOC.SC.M (>40)	0.52 × TDA + 1
		0.0 (L)	<32.0	All TDAs	SOC.SC.L	1.100 × TDA + 2.100
		−15.0 (I)	≤−13.0		SOC.SC.I	1.530 × TDA + 0.360
	Chef Base (CB)	38.0 (M)	≥32.0	All Volumes	CB.SC.M	0.081 × V + 1.117
		0.0 (L)	<32.0		CB.SC.L	0.297 × V + 2.591
	Pull-Down (PD)	38.0 (M)	≥32.0		PD.SC.M	0.11 × V + 0.81

* The meaning of the letters in this column is indicated in the columns to the left.
** "V" is the volume, expressed in ft³, as determined in appendix B to this subpart. "TDA" is the total display area, expressed in ft², as determined in appendix B to this subpart.
*** For equipment classes designated "with Feature," refer to table 4 to this paragraph for the list of qualifying features applicable to each class.

TABLE 4 TO PARAGRAPH (b)(1)—QUALIFYING FEATURES FOR EQUIPMENT CLASSES DESIGNATED "WITH FEATURE"

Equipment class	Qualifying feature(s)
VCT.SC.M (≤100)	Pass-through doors.
	Sliding doors.
	Both pass-through and sliding doors.
	Roll-in doors.
	Roll-through doors.
VCT.SC.L (≤70)	Pass-through doors.
VCS.SC.M	Pass-through doors.
	Roll-in doors.
	Roll-through doors.
	Drawer units.
VCS.SC.L (≤100)	Pass-through doors.
	Roll-in doors.
	Roll-through doors.
	Drawer units.
HCS.SC.L	Forced air evaporator.

(2) For commercial hybrids and commercial refrigerator-freezers, for each compartment, measure the TDA or volume of that compartment. The MDEC limit for each compartment shall be the calculated value obtained by entering that compartment's TDA or volume into the standard equation in paragraph (b)(1) of this section for that compartment's equipment class. The total MDEC limit for each model shall be the sum of the MDEC values for all of its compartments. Measure the CDEC or TDEC for the model as follows:

(i) For commercial hybrids and commercial refrigerator-freezers where two or more independent remote condensing units are each connected to a separate, individual compartment, measure the total refrigeration load of each compartment separately according to appendix B to this subpart. The CDEC for the model shall be the sum of the CEC for each compartment, FEC, LEC, AEC, DEC, PEC, and OEC.

(ii) For commercial hybrids and commercial refrigerator-freezers where two or more compartments are connected to one remote condensing unit, measure the total refrigeration load of the model according to appendix B to this subpart. Calculate a weighted average adjusted dew point temperature for the model by: multiplying the adjusted dew point temperature of each compartment by the volume of that compartment; summing the resulting values for all compartments; and dividing the resulting total by the total volume of all compartments. Calculate the CEC for the model using the total refrigeration load and the weighted average adjusted dew point temperature. The CDEC for the model shall be the sum of the CEC, FEC, LEC, AEC, DEC, PEC, and OEC.

(iii) For commercial hybrids and commercial refrigerator-freezers connected to a self-contained condensing unit, measure the TDEC for the model according to appendix B to this subpart.

(c) The energy conservation standards in paragraph (a) of this section do not apply to chef bases or griddle stands, buffet tables or preparation tables, blast chillers, blast freezers, or mobile refrigerated cabinets. The energy conservation standards in paragraph (b) of this section do not apply to buffet tables or preparation tables, blast chillers, blast freezers, or mobile refrigerated cabinets.

Note: The following appendix will not appear in the Code of Federal Regulations.

November 27, 2023

Ami Grace-Tardy,
Assistant General Counsel for Litigation, Regulation and Energy Efficiency, U.S. Department of Energy, Washington, DC 20585.

Re: Commercial Refrigerators, Freezers, and Refrigerator-Freezers Energy Conservation Standards DOE Docket No. EERE–2017–BT–STD–0007

Dear Assistant General Counsel Grace-Tardy:

I am responding to your October 10, 2023 letter seeking the views of the Attorney

General about the potential impact on competition of proposed energy conservation standards for commercial refrigerators, freezers, and refrigerator-freezers (collectively ''CRF'').

Your request was submitted under Section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended (ECPA), 42 U.S.C. 6295(o)(2)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR 0.40(g). The Assistant Attorney General for the Antitrust Division has authorized me, as the Policy Director for the Antitrust Division, to provide the Antitrust Division's views regarding the potential impact on competition of proposed energy conservation standards on his behalf.

In conducting its analysis, the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice, by placing certain manufacturers at an unjustified competitive disadvantage, or by inducing avoidable inefficiencies in production or distribution of particular products. A lessening of competition could result in higher prices to manufacturers and consumers.

We have reviewed the proposed standards contained in the Notice of proposed rulemaking and announcement of public meeting (88 FR 70196, October 10, 2023) and the related Technical Support Documents. We have also reviewed public comments and information provided by industry participants and have attended and reviewed information presented at the Webinar of the Public Meeting held on November 7, 2023.

Based on this review, our conclusion is that the proposed energy conservation standards for CRF are unlikely to have a significant adverse impact on competition.

Sincerely,

David G.B. Lawrence,

Policy Director.

[FR Doc. 2024–31214 Filed 1–17–25; 8:45 am]

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